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Kansas Legislator Briefing Book 2019

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Financial Institutions and Insurance

E-1 Consumer Credit Reports and Security Freezes

Identity theft is a fast-growing crime in the United States. Consumers can combat identity theft by placing a security freeze on their credit reports (known as "consumer reports" under Kansas law), making it more difficult for identity thieves to open new accounts in the consumer's name. In 2018, various states, including Kansas, and the federal government took action to allow consumers to place and remove security freezes on their credit reports for free.

Security Freezes

The Federal Trade Commission (FTC) provides consumer information on security freezes. A consumer may place a security freeze, also known as a credit freeze, on the consumer's credit report. The security freeze allows a consumer to restrict access to the credit report (the credit report or any consumer information contained in the report cannot be released without authorization from the consumer), which makes it more difficult for identity thieves to open new accounts in the consumer's name. A security freeze does not affect the consumer's credit score or prevent the consumer from obtaining a free annual credit report. However, if the consumer wants to open a new account, apply for a job, rent an apartment, or buy insurance, the consumer will need to temporarily lift the freeze.

Consumer Reporting Agencies and Credit Reports

Consumer reporting agencies (CRAs), also known as credit bureaus or credit reporting companies, compile and sell credit reports. According to the Consumer Financial Protection Bureau, CRAs collect credit account information about consumer borrowing and repayment history, including the original amount of a loan; the credit limit on a credit card; the balance on a credit card or other loan; the payment status of the account, including whether the consumer has repaid loans on time; items sent for collection; and public records, such as judgments and bankruptcies. Credit reports also contain personal information, including the consumer's name and any name used in the past in connection with a credit account, including nicknames; current and former addresses; birth date; Social Security number; and phone numbers.

CRAs then sell the information in a consumer's report to creditors, insurers, employers, and other businesses. Lenders use these

reports to help determine whether they will loan a consumer money, what interest rates to offer, and to determine whether the consumer will meet the terms of a credit account. Other businesses might use these credit reports to determine whether to offer the consumer insurance; rent a home to a consumer; or provide the consumer with cable television, Internet, utilities, or cell phone service. The FTC specifies CRAs may not provide information about the consumer to the employer or a prospective employer without the consumer's written consent. (*Note:* Kansas law contains provisions governing release of consumer report information to employers; see KSA 50-705 and 50-712.)

The FTC protects consumers and promotes competition. The FTC enforces the Fair Credit Reporting Act (FCRA) with respect to CRAs. The FCRA is a federal law that provides directions and limits on how CRAs disclose credit report information. The FCRA requires each of the nationwide CRAs (Equifax, Experian, and TransUnion) to provide a consumer with a free copy of the consumer's credit report, at the consumer's request, every 12 months. A consumer may order reports from each of the three nationwide CRAs at the same time or separately. Equifax, Experian, and TransUnion have set up a central website, a toll-free telephone number, and a mailing address through which a consumer may obtain a free annual report.

Additionally, a consumer is entitled to a free credit report if a company takes adverse action against the consumer, such as denying an application for credit, insurance, or employment, and the consumer asks for the report within 60 days of receiving notice of action. The consumer is also entitled to one free report a year, if the consumer is unemployed and plans to look for a job within 60 days; the consumer is on welfare; or the report is inaccurate because of fraud or identity theft. Otherwise, a CRA may charge the consumer a reasonable amount for another copy of the report within a 12-month period.

Kansas also has a state version of the FCRA, KSA 50-701 *et seq*.

Equifax Data Breach and Subsequent Action by Kansas and the Federal Government

On July 29, 2017, Equifax learned of a cybersecurity incident potentially impacting approximately 143.0 million U.S. consumers. According to Equifax, criminals exploited a U.S. website application vulnerability to gain access to certain files from May 13, 2017, through July 30, 2017. The information accessed primarily includes names, Social Security numbers, addresses, and, in some instances, driver's license numbers. Criminals also accessed credit card numbers for approximately 209,000 U.S. consumers and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers. As part of Equifax's investigation into application vulnerability, Equifax identified unauthorized access to limited personal information for certain United Kingdom and Canadian residents.

Kansas Law

In 2018, the Kansas Attorney General requested introduction of a bill that would prohibit CRAs from charging consumers for placing or removing a security freeze in light of the Equifax data breach. The Kansas Legislature passed HB 2580, which amended the state's FCRA to clarify that continuing statutes governing security freezes on consumer reports fall within the FCRA. The legislation also amended KSA 2018 Supp. 50-723 to remove a provision allowing a $5 fee to place, temporarily lift, or remove a freeze, and instead prohibited CRAs from charging a fee for these services.

Further, the bill amended KSA 2018 Supp. 50-725 governing security freezes for "protected consumers" (defined under the state's FCRA as an individual under 16 years of age when the request for a security freeze is made or an individual for whom a guardian or conservator has been appointed) to remove a provision allowing a $10 fee to place or remove a security freeze.

Federal Law

In May 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155). The bill, among other things, amended the FCRA to require a CRA to provide consumers with free credit freezes and to notify consumers of their availability, established provisions related to placement and removal of these freezes, and created requirements related to the protection of the credit records of minors.

As of September 21, 2018, CRAs may not charge a fee for the placement or removal of a security freeze on consumer credit reports. If a consumer requests a security freeze online or by phone, the CRA must place the freeze within one business day. If the consumer requests a freeze to be lifted, the CRA must lift the freeze within one hour. If the consumer makes the request by mail, the agency must place or lift the freeze within three business days after the CRA receives the request.

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E-2 Kansas Health Insurance Mandates

Background

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas; and
- Group health insurance policies issued or renewed in Kansas. (The individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.

Health maintenance organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (ERISA plans*). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans; or
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

*ERISA = The Employee Retirement Income Security Act of 1974; states' laws that relate to employee benefits are pre-empted by this act.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates). The Legislature more recently has authorized the study of proposed benefit mandates.

Provider mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists, chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the

same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners received recognition for reimbursement for services in 1990. In a 1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit mandates. The first benefit mandate was passed by the 1974 Legislature to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage, which could be rejected only in writing. This mandate also has been broadened over time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients and cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After several attempts, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease,

Table A
Kansas Provider and Benefit Mandates

Provider Mandates	Year	Benefit Mandates	Year
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Practice Registered Nurses	1990	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001
		Autism Spectrum Disorder	2014

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration (FDA) for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference *compendia* or in substantially accepted peer-reviewed medical literature.

as well as for educational costs associated with self-management training.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to periodically review all State-mandated health insurance coverage. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies to submit an impact report that assesses both the social and financial effects of the proposed mandated coverage to the legislative committees assigned to review the proposal. The law also requires the Commissioner of Insurance to cooperate with, assist, and provide information to any person or organization required to submit an impact report.

The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249.

Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact factors include the extent to which the proposal would change the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Plan study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature would only apply to the state health care benefits program (State Employee Health Plan [SEHP]) for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after this one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the SEHP, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the SEHP or whether additional utilization and cost data are required.

Recent Review and Legislative Trends

2009 Session—Mandates Review

Kansas legislative review (KSA 40-2249a). The Senate Committee on Financial Institutions and Insurance and the House Committee on

Insurance received briefings, during the regular session, from committee staff on the current and recently considered health insurance mandates. Testimony was also received from interested parties.

2010 Session—An Emerging Trend: the Study Directive

The study before the law. The Legislature's review and response to health insurance mandates has recently included a new direction: the study before the mandate is considered and passed by the Legislature. As prescribed by the 1999 statute, a mandate is to be passed by the Legislature, applied to the SEHP for at least one year, and a recommendation is made about continuation in the SEHP or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the SEHP (corresponding mandate legislation in 2008: SB 511, HB 2864). (*Note:* In 2011, KHPA transitioned into the Kansas Department of Health and Environment as the Division of Health Care Finance.) No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Legislative Biennium.

In addition, 2009 Sub. for HB 2075 would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the SEHP, the affordability of the coverage in the small business employer group, and the state high-risk pool (corresponding legislation in 2009 SB 288). The study bill was re-referred to the House Committee on Insurance and no action was taken by the 2010 Legislature.

During the 2010 Session, the House Committee on Insurance considered the reimbursement of services provided by certain BSRB licensees (SB 104; HB 2088 and HB 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the SEHP, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies that provide reimbursement for these provider services to the amounts of premiums charged by insurers that do not provide direct reimbursement. Under SB 388, KHPA would also have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in Conference Committee. The study requirement was also included as a proviso to the Omnibus appropriations bill (SB 572, section 76). The proviso was vetoed by the Governor; the veto was sustained.

Autism benefit. The 2010 Legislature considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorders (ASD). Senate Sub. for HB 2160 required the Health Care Commission, which administers the SEHP, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age was less than 19 years during the 2011 Plan Year. The services provided and limitations on benefits also were prescribed. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the House Speaker that included information (*e.g.,* cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature considered in the next session following the receipt of the report whether to require the coverage for ASD to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract that provided for accident and health services and was delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Oral anticancer medications. Senate Sub. for HB 2160 required all individual or group health insurance policies or contracts (including the municipal group-funded pool and the SEHP) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected

cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA 40-2249a, was required to submit a report to the Senate President and the House Speaker that indicated the impact the provisions for orally administered anticancer medications had on the SEHP, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether the coverage should continue for the SEHP or whether additional utilization and cost data was required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

Autism benefit. The 2012 Legislature again considered legislation (HB 2764 and SB 226) to enact ASD coverage requirements for covered individuals under the age of 19, similar to those requirements specified in 2010 Senate Sub. for HB 2160; the proposed requirements, however, would have applied to all individual and group health insurance policies, plans, and contracts subject to state law. The 2012 bills exempted the proposed ASD coverage from the test track requirements specified in KSA 40-2249a.

HB 2764, as amended by the House Committee of the Whole, also would have required coverage in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and other Medicaid programs covering children. The bill, among other things, also would have required a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19. HB 2764, as amended, passed the House and was referred to a Senate Committee. Attempts to advance the bill to Senate General Orders failed and the bill died in Committee. ASD legislation was introduced during the 2013 Session (SB 175; HB 2317 and HB 2395.)

The Health Care Commission opted to continue ASD coverage in the SEHP, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit (*Note:* Coverage affected by 2014 law).

The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required, subject to limitations on benefits and services provided, health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also created the Applied Behavior Analysis (ABA) Licensure Act. The SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018 Biennium

The House Committee on Insurance held hearings on two benefit mandate bills: HB 2103 (amino acid-based elemental formula) and HB 2021 (hearing aids). No formal committee action was taken during the 2017 Session; however, a SEHP study has been requested relating to HB 2103 to provide more information on economic and social impact factors associated with the requirements of KSA 40-2249. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 Interim Special Committee on Health.

Amino acid-based elemental formula. Following receipt of the SEHP report, the House Committee on Insurance recommended a substitute bill limiting the coverage of formula to the SEHP enrollees for a one-year ("test track") period in Plan Year 2019 and requiring a report to the 2020 Legislature. These provisions ultimately were enacted in 2018 SB 348.

Telemedicine. The 2017 Interim Special Committee on Health did not recommend the 2017 legislation (HB 2206 and HB 2254), but recommended the introduction of comprehensive telemedicine legislation in the 2018 Session. The Kansas Telemedicine Act (Senate Sub. for HB 2028) provides that coverage for a health care service delivered *via* telemedicine is not mandated if such service is not already covered when delivered by a health care provider and subject to the terms and conditions of the covered individual's health benefits plan. Further

information about telemedicine and telehealth services in Kansas is available in F-6 Recent Telemedicine Legislation in Kansas.

Affordable Care Act Requirements—Essential Health Benefits

The federal Affordable Care Act (ACA) does not directly alter or preempt Kansas or other states' laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services [HHS]) directs the Secretary of HHS to determine the "essential health benefits" to be included in the "essential health benefits" package that qualified health plans (QHPs) in the Exchange marketplaces are required to cover. "Essential health benefits," as defined in Section 1302(b), include the required coverage of at least the following ten general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges. Women's preventive health services were separately defined by federal regulation in August 2011 (*Federal Register*, Vol. 76, No. 149: 46621-46626) and required that "a group health plan or health insurance issuer must cover certain items and services, without cost-sharing." Coverages included annual preventive-care medical visits and exams, contraceptives (products approved by the FDA), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS "essential benefits" list of coverages, the State must defray any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rule-making for defining "essential benefits." The bulletin outlined a "benchmark approach" allowing states the ability to choose from the following benchmark health plans (a benchmark plan would reflect the scope of benefits and services offered by a "typical employer plan"):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state's commercial market by enrollment.

Should a state choose not to select a benchmark, the default option would become the small group plan with the largest enrollment in the state. In 2010, the Kansas Insurance Department contracted with Milliman, Inc., to analyze plans and related benefits and services available in Kansas. "The Milliman Report" analyzed nine plans, and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas.

The Commissioner of Insurance submitted the following recommendations and conclusions to the Governor for consideration of a state essential health benefits benchmark: selection of the largest small group plan, by enrollment (the Blue Cross Blue Shield of Kansas Comprehensive Plan); supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP; and anticipation of further guidance from HHS on

the definition of "habilitative services" later in Fall 2012. No specific recommendation was made by the Commissioner.

Twenty-five states, Kansas included, did not provide a recommendation on a benchmark plan to HHS by the September 30, 2012, deadline; therefore, HHS assigned those states the largest small group plan as the benchmark for 2013-2016 (in August 2015, HHS extended the plans to 2017).

Recent developments. On April 9, 2018, the Centers for Medicare and Medicaid Services finalized its Benefits and Payment Parameters rule for 2019. Among changes prescribed in the rule, beginning in the 2020 Plan Year, states will have additional flexibility to define their benchmark plan and can update plans annually. States will also be permitted to maintain their current 2017 benchmark plan without taking any action.

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E-3 Kansas Uniform Consumer Credit Code

What is the UCCC?

Enacted in 1973, the Kansas Uniform Consumer Credit Code (UCCC or Code) applies to all aspects of consumer credit addressing transactions for personal, family, and household purposes. UCCC transactions include consumer sales (closed-end or revolving, including retail credit card purchases), consumer loans (including purchases using bank credit cards), and consumer leases. Consumer transactions may involve the consumer and retail merchants; banks, savings and loan associations, and credit unions; licensed lenders, including finance companies; and lender credit card companies. In general, transactions greater than $25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so. The UCCC does not govern commercial transactions (*e.g.,* the sale and lease of goods, negotiable instruments, bank deposits, and secured transactions); those transactions are subject to the Uniform Commercial Code.

Who is the Code Administrator?

The Office of the State Bank Commissioner (OSBC) provides oversight of the UCCC. During the 1998 Interim, the Special Committee on Financial Institutions and Insurance studied reorganization of the financial institutions' regulatory agencies and its recommendations included consolidation of the Office of the Consumer Credit Commissioner with the Office of the Bank Commissioner. As a result of action by the 1999 Legislature, the Office of the Consumer Credit Commissioner was abolished, and the powers and functions transferred to the OSBC. A Deputy Commissioner of Consumer Mortgage and Lending position was created within the OSBC, and the Deputy Commissioner is the Administrator of the UCCC.

What are the Permissible Interest Rates?

The UCCC establishes three categories of interest rates: closed-end or installment rates (KSA 16a-2-201); open-end or revolving credit rates (KSA 16a-2-202); and lender rates (KSA 16a-2-401). Closed-end installment contracts calculate in advance

the amount financed and the finance charge and provide payment of the calculated total in equal installments at equal intervals, *e.g.*, auto loans. Open-end credit includes revolving credit accounts offered by retailers and lines of credit (*e.g.,* bank credit cards) payable in amounts, usually monthly, that are a percentage of the outstanding balance. Lender rates are those charged on loans made by licensed lenders, supervised financial institutions, and lender credit card arrangements.

Under current law, closed-end, open-end, and lender rate consumer credit transactions allow a seller to set a finance charge at "any rate agreed to by the parties," subject to the statutory limits of prepaid finance charges. The limitations and computations for the finance charges are as follows:

- Closed-end consumer credit sales:
  - Sales, other than manufactured homes: maximum amount is 2 percent of the amount financed or $100, whichever is less; or
  - Sales, manufactured homes: maximum amount is 5 percent of the amount financed (fee must be used to reduce or "buy-down" the interest rate of the sale);
- Open-end consumer credit sales:
  - Average daily balance: finance charge is calculated on the sum of the amount of actual daily balances each day during the billing cycle divided by the number of days in the billing cycle; or
  - Ending balance: finance charge is calculated on the unpaid balance of the account at the end of the billing cycle;
- Lender credit sales:
  - Periodic rate ceilings (loans other than first or second mortgage): 36 percent per year on the portion of the unpaid balance that is $860 or less, and 21 percent per year on the portion of the unpaid balance that exceeds $860 (subject to limitations on prepaid finance charges); or
  - Periodic rate ceilings (loans secured by second mortgage, manufactured homes): 18 percent per year. The rate would apply to any first mortgage loans made subject to the UCCC;
- Prepaid finance charges on consumer loans:
  - First or second mortgage loan or certain manufactured home loans, not to exceed 8 percent of the amount financed; however, the total of all prepaid finance charges payable to the lender cannot exceed 5 percent of the amount financed; or
  - Other consumer credit loans: maximum amount is 2 percent of the amount or $100, whichever is less; and
- Payday loan transactions are subject to special limitations for finance charges:
  - The loans and the cash advance must be $500 or less with a finance charge not to exceed 15 percent of the amount of the advance. In addition, the Code includes a provision that the contract interest rate after maturity cannot be more than 3 percent per month.

History of Interest Rates Charges

In 1980, the Kansas Legislature amended KSA 16a-2-201 to allow a seller in a closed-end credit sale or in an open-end sale to charge 18 percent interest as an alternative to other specified rates, including 21 percent on $300 or less, 18 percent on amounts between $300 and $1,000, and 14.45 percent on amounts in excess of $1,000. KSA 16a-2-401 was amended to allow a supervised financial institution to charge 18 percent interest without being a lender licensed by the Consumer Credit Commissioner. The rate charges were sunset at periods of one (1980-1982) and two years (1983-1987). In 1988, the Legislature (SB 507) amended the rates on closed-end

credit sales by reducing, from three to two, the applicable interest rates, establishing:

- 21 percent on the first $1,000; and
- 14.45 percent on amounts over $1,000; or 18 percent on the outstanding balance.

Interest rates on open-end credit sales also were amended to allow for an alternate rate. SB 507 authorized a nonrefundable origination fee not to exceed 2 percent or $100 on closed-end credit sales. The 1993 Legislature amended the Code to allow that on and after January 1, 1994, all finance charges on consumer loans and consumer credit sales be computed on the unpaid principal balances by the actuarial method. Precomputed contracts created on and after January 1, 1994, were prohibited.

Legislative Review

1999 Legislature—Sub. for SB 301

The 1999 Legislature amended several sections of the UCCC relating to rates, terms, and conditions on consumer credit sales and consumer loans for personal, family, or household purposes, and allowed certain real estate transactions to be brought under the Code, specifying the rates, terms, and conditions for such loans. The legislation also added new sections that imposed new obligations on persons making loans under the Code.

Changes to the law included:

- Removing the definition of “origination fee” and adding a definition of “prepaid finance charge,” which for a consumer loan secured by a first or second mortgage may not exceed 8 percent of the amount financed (aggregate 5 percent), and for any other consumer loan and, for closed-end consumer credit sales, the prepaid finance charge may not exceed the lesser of 2 percent of the amount financed or $100; and
- Establishing that the finance charge on a consumer loan or consumer credit sale must be computed by using either the 365/365 or 360/360 method, but not on a 365/360 method (lender may assume that a month has 30 days, regardless of the actual numbers of days in a month).

In regard to consumer loan rate ceilings, the legislation:

- Removed the interest rate limitation on open-end consumer loans, including lender credit cards;
- Maintained a maximum interest rate of 36 percent on the first $860 of a closed-end consumer loan;
- Increased the maximum allowable interest rate on amounts of a closed-end consumer loan in excess of $860, from 18 percent to 21 percent (not applicable to loans secured by a first or second mortgage); and
- Established 18 percent as the maximum rate of interest that may be charged on a loan secured by a first or second mortgage, if the parties to the loan agree in writing to make the loan under the Code.

In addition, finance charges under the Code were amended to:

- Delete the cap on annual fees that may be charged for the privilege of using an open-end credit account; and
- Allow a creditor to charge fees on an annual or monthly basis, over limit fees, and cash advance fees on open-end credit in an amount agreed to by the consumer.

2000 Legislature

The 2000 Legislature amended the Code to allow a seller to impose a prepaid finance charge in an amount not to exceed 5 percent for the purpose of reducing the interest rate on the sale of a manufactured home. Another bill (HB 2691) clarified the interest rate on a closed-end loan may be 36 percent on the first $860 financed and 21 percent on the balance of the loan that exceeds $860.

2005 Legislature—Senate Sub. for HB 2172

The 2005 Legislature amended several provisions of the Kansas Mortgage Business Act (KMBA) and the Code. The UCCC provisions:

- Established a contract rate to replace the annual rate in prior law. Calculations utilizing the 365/365 method and the 360/360 method for the rate of the finance charge remain unchanged;
- Amended 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 allows a creditor to assume there are 30 days in the computational period, regardless of the actual number of days between the scheduled dates;
- Amended the license requirements for individuals making supervised loans by requiring an applicant to provide evidence in the form and manner prescribed by the Code Administrator that establishes the applicant will maintain a satisfactory minimum net worth to engage in the credit transactions for which the applicant has proposed;
- Replaced the references in the bill to "supervised loans" with "loans for personal, family, or household purposes";
- Clarified references to applicants and licensees to include persons the applicant or licensee contracts with or employs who is directly engaged in lending activities;
- Amended annual reporting requirements to include a provision to prevent alteration or any other destruction of records with the intent to impede, obstruct, or influence any investigation by the Administrator;
- Amended the requirement for first and second loan consumer mortgages to allow that a mortgage not be recorded if moneys are not available for disbursal 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;
- Authorized a statute of limitations for prosecution of crimes under the Code, no more than five years after the alleged violation. A restitution provision was added and includes that an order may include an interest rate not to exceed 8 percent; and
- If deemed necessary by the Administrator, required fingerprinting of applicants, licensees, copartnerships or associations, any agents, or others directly engaged in lending activities.

UCCC—Payday Loan Regulation

The 2005 legislation also amended 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 is to be an amount not to exceed 15 percent of the amount of the cash advance. The bill also required publication of the notice in Spanish in payday loan agreements and included protections for military borrowers. (See *E-4 Payday Loan Regulation and Update on Small Dollar Lending in Kansas* for an in-depth discussion on payday loan laws and regulatory activities.)

Other Legislative Review—2005-2006

In addition to the enacted measures discussed previously, the Legislature reviewed the following proposed amendments to the UCCC.

HB 2143 would have amended the Code to allow a seller to charge an interest rate not to exceed 21 percent per year. The interest rate ceiling applies to the finance charges under the UCCC: closed-end consumer credit sales; open-end credit sales; and lender credit sales. The bill also would have removed the authority to impose deferral

charges on closed-end consumer credit sales. Under current law, the finance charge rates are not capped and instead are subject to the rate agreed to by the parties to the transaction with established limitations on any prepaid finance charges. HB 2278 would have amended the Code by creating an alternate finance charge to the finance charges currently specified in KSA 16a-2-401, providing for a sliding-scale rate structure for closed-end consumer installment loans financed between $100 and $1,500. Specifically, the bill would have allowed a licensee to charge in lieu of the charges specified in current law:

- A loan acquisition charge, not exceeding the lesser of 10 percent of the financed amount or $75; and
- A monthly installment account handling charge, based on a sliding-scale rate. For example, an account handling charge for a loan financed in the amount of $550 would be up to $17.50, while the charge for a $1,100 loan would be an amount up to $22.50.

The bill would have defined the terms of the loan with a minimum of 4 months and a maximum amount of 18 months and 5 days. The bill also would have addressed loan refund rates, prepayments, notification, and contract rates. The rates and charges created by the bill would not apply to payday loans.

During the 2005 Interim, the Special Committee on Financial Institutions and Insurance was charged, among other things, to review HB 2143 and to study the current finance charges, rates, and terms under the UCCC and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas. The Committee concluded the interest rate ceiling legislation (HB 2143) should not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) should not be recommended to the 2006 Legislature and recommended new legislation to address the requested HB 2278 amendments. SB 376 was introduced during the 2006 Session. The bill received a hearing in the Senate Committee on Financial Institutions and Insurance, but no further action was taken and, with HB 2143 and HB 2278, died at the end of the 2006 Session.

Recent UCCC Amendments

The 2009 Legislature amended the UCCC in 2009 SB 240. The bill was requested by the OSBC in response to the requirements of Title V (the Secure and Fair Enforcement [S.A.F.E.] for Mortgage Licensing Act) of the Federal Housing and Economic Recovery Act of 2008. The bill made amendments to both the KMBA and the UCCC to include prohibited acts and define the practices and registration requirements of residential mortgage loan originators. Among the requirements, mortgage loan originators are required to submit certain application and related information to a nationwide mortgage loan originator registry (established by the S.A.F.E. Act). Information reported to the registry includes violations of the law (loan originators), as well as enforcement actions. Kansas entered the registry in 2010.

The 2010 Legislature amended the Code in SB 410. The bill prohibits retailers from imposing a surcharge on a cardholder who uses a debit card in lieu of a cash payment. Under prior law, the prohibition applied only to credit card holders.

Does the UCCC prohibit debit and credit card fees?

The UCCC does not prohibit all credit and debit card fees. The UCCC does prohibit application of a surcharge fee when a consumer opts to use a credit or debit card in lieu of cash payment (*e.g.,* a gas station could not charge $0.10 more per gallon for a customer using a card; however, the station could choose to discount for cash payment.)

The 2011 Legislature modified Code licensee fee provisions to change the percentage remitted to the State General Fund from 20 percent to 10 percent.

2017 Study. The Legislative Coordinating Council directed a study of legislation relating to the Code

and regulation of small dollar lending in Kansas. The Special Committee on Financial Institutions and Insurance was convened in October 2017 to study the impact of 2017 HB 2267. This review included a study of current finance charges, rates, and terms under the UCCC; the impact of the proposed legislation and potential modifications related to the Consumer Financial Protection Bureau's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas. The Special Committee made no recommendation relative to the bill. The bill died at the end of the 2018 Session.

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E-1
Consumer Credit Reports and Security Freezes

E-2
Kansas Health Insurance Mandates

E-3
Kansas Uniform Consumer Credit Code

E-4
Payday Loan Regulation and Update on Small Dollar Lending in Kansas

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Financial Institutions and Insurance

E-4 Payday Loan Regulation and Update on Small Dollar Lending in Kansas

The Kansas Legislature began its review of payday lending during the 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner violating the Kansas Uniform Consumer Credit Code (generally referred to as either the UCCC or Code). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time and were collecting charges exceeding those allowed under the UCCC.

The Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check-cashing service. The Attorney General, concurring such practice violated the UCCC, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 (1991) addressed the concern about excessive interest charges and fees, and the Attorney General supported its passage. In some instances, the annual percentage rate (APR) on these short-term loans ranged from 600.0 percent to 1,600.0 percent. Despite these rates, neither the Consumer Credit Commissioner nor the Office of the Attorney General had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to the Senate Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action in the

House, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36.0 percent to 360.0 percent. Several members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Office of the Attorney General and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender ($680) and subject to the following conditions:

- On any amount up to and including $50, a finance charge of $5.50 could be charged; on amounts in excess of $50 but not more than $100, the finance charge could be 10.0 percent of the amount, plus a $5.00 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7.0 percent of the amount with a $10 minimum, plus a $5.00 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of $17.50, plus a $5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3.0 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Consumer Credit Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans.

The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. In 1999, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General advised that while the "Office

does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy." Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, as enacted in 1999, made several significant changes in the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans.

During the 2001 Session, the Deputy Commissioner (who is the Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a "Notice to Borrower" appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner. During the 2002 Session, HB 2877 was introduced, which would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including $50, the charge would have been reduced from $5.50 to $4.00; on amounts in excess of $50 but not more than $100, the charge would have been reduced from 10.0 percent to 8.0 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7.0 percent to 5.0 percent and the minimum allowable charge would have been reduced from $10 to $8; and on amounts of $250 but not greater than $860, the charge would have been reduced from 6.0 percent to 4.0 percent and the minimum reduced from $17.50 to $12.50.

HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee requested, and the Legislative Coordinating Council created, an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the regulation of payday loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation. The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim, nor complete a report on its assigned subject matter.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans.

The bill:

- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions, which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: "Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution";
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and
- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee also reviewed a payday loan bill, SB 439, that would have created a

maximum loan amount ($500, rather than $860) and a flat fee (not more than $15 per $100 loaned). The bill received a hearing, but no action was taken on the bill, and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's (OSBC) representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, which included provisions for both mortgage brokers and supervised lenders. In addition to the new enforcement powers and penalties created by the bill, the legislation also amended 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 is to be an amount not to exceed 15.0 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the U.S. 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 U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository lending model, a closed-end installment loan (proposed in 2005 HB 2278 and 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Legislative Proposals (2007-2010)

The regulation of payday lending again was addressed during the 2007, 2008, and 2010 Sessions. SB 217 (2007) and HB 2244 (2007) would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill at the time of the hearing. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717 (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 Biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a $1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to the OSBC. The moneys would have been transferred to the Professional Development Fund (Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had

indicated in the fiscal note the bill would generate approximately $1.2 million from the estimated $1.2 million payday and title loans that would be issued in FY 2011. The bill was referred to the Senate Committee; the bill died in Committee.

Recent Legislative Proposals (2013-2018)

The 2013 Legislature introduced legislation (SB 30 and HB 2036) that would have amended the UCCC to prevent lenders from making payday loans to a consumer who already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator to establish an Internet database; a verification fee of up to $1 could be charged by the OSBC or its vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee.

During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the “Respectful Lending to Kansas Seniors Act.” The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen’s federal adjusted gross income for the taxable year. A hearing was not held on the bill, and it died in Committee.

The 2017 Legislature introduced SB 234, which would have set a 36.0 percent cap and restricted the terms of payday loans. The bill was referred to the Senate Committee on Federal and State Affairs. A hearing was not held on the bill, and the bill died in the Committee. (*Note:* the Senate Committee on Federal and State Affairs held an informational briefing on payday lending during the 2017 Session, but did not hold a hearing on a specific piece of legislation.) The 2017 Legislature also introduced HB 2267, which would have, among other things, amended provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would have amended the definition of “consumer loan” and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill was originally referred to the House Committee on Financial Institutions and Pensions, but was re-referred to the House Committee on Federal and State Affairs.

HB 2267 and related regulatory review was assigned by the Legislative Coordinating Council to the interim Special Committee on Financial Institutions and Insurance (Special Committee). The Special Committee met in October 2017. As part of the Report of the Special Committee to the 2018 Legislature, the Special Committee noted its discussion on HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB). The Special Committee also encouraged the OSBC to hold regular stakeholder meetings to assist in drafting changes to the UCCC and requested regular updates during the 2018 Session.

No further action was taken on HB 2267 during the 2018 Session. In addition, the 2018 Legislature introduced SB 402, which would have established the Kansas Veterans Loan Act and added a new section to the UCCC regarding consumer loan transactions made with veterans. SB 402 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in Committee.

Small Dollar Lending Activity in Kansas

During the 2017 Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner in September 2018 summarized small dollar loans provided by licensees: payday only (44); payday only branches (81); payday and title (12); payday and title branches (116); title only (6); and title only branches (42). The number of locations for these loans totals 301 (62 companies, 239 branches). The calendar year (CY) 2017 loan volume for payday loans was an estimated $294.0 million (in CY 2013, the volume was an estimated $396.0 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online database available to the public of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders. The searchable database contains the license number, company name, company location, date of next renewal, and notes the status of each license. This information is accessible on the OSBC's website at https://online.osbckansas.org/Lookup/LicenseLookup.aspx.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act," PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established the CFPB within the Federal Reserve System with rulemaking, enforcement, and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010.

The CFPB has been evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). In June 2016, it proposed a rule intended to require lenders to "take steps to make sure consumers have the ability to repay their loans" and include other borrower protections to address debit fees assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its Final Rule. The implementation period would be 21 months following the formal publication of the Final Rule. The Final Rule covers short-term loans less than 45 days in duration that are open-end or closed-end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

CFPB Statement—January 16, 2018. On January 16, 2018, the CFPB issued the following statement:

> "January 16, 2018 is the effective date of the Bureau of Consumer Financial Protection's final rule entitled "Payday, Vehicle Title, and Certain High-Cost Installment Loans" ("Payday Rule"). The Bureau intends to engage in a rulemaking process so that the Bureau may reconsider the Payday Rule."

The CFPB expects to issue a notice of the proposed rulemaking by early 2019.

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