

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2505**

As Amended by Senate Committee on Financial  
Institutions and Insurance

**Brief\***

HB 2505 would amend and insert definitions in the provisions of the Banking Code that apply to lending limits to include derivative transactions and also would amend the Code to create an exception to the provisions that apply to a prohibition on the establishment or operation of a trust company by an out-of-state trust entity.

***Legal Lending Limits***

Specifically, the bill would add a new provision to the meaning of the term “loan” to include “any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.”

The bill also would create a definition in the Banking Code for the term “derivative transaction” and would assign the following definition: any transaction that is a contract agreement, swap, warrant, note or option that is based in whole, or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest, or other rates, indices, or other assets.

***Interstate Branching, Trust Departments; Reciprocity  
Requirement***

The bill would modify a provision in the Banking Code

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\*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>

which prohibits any out-of-state trust company, trust department of a bank, or similar entity from establishing or operating a trust facility in Kansas to create an exception for certain out-of-state trust entities. The exception would allow out-of-state trust entities, in instances where the laws of the state of the home office of the trust company or similar business entity is located reciprocally authorize a Kansas chartered trust company or similar entity to establish or operate a trust facility within that state, to establish or operate a trust facility in Kansas.

The bill would require these non-resident trust entities to file a copy of the application submitted to the home state and proof that the home state has reciprocity with Kansas with the Bank Commissioner, before the entity establishes a trust facility in Kansas. Further, a Kansas trust company could not establish an out-of-state trust facility until an application has been filed with the Bank Commissioner and approval has been received; the application would be subject to the provisions of the Code regulating the establishment of trust service offices (KSA 9-2108). Similarly, a Kansas bank with a trust department could not establish an out-of-state trust facility until an application has been filed with the Bank Commissioner and approval has been received; this application would be subject to the provisions of the Code regulating the establishment of a trust branch bank (KSA 9-1135).

***Effective Date***

The legal lending limit provisions of the bill would take effect and be in force from and after January 21, 2013, (requirements of Dodd-Frank Wall Street Reform and Consumer Protection Act [Sections 610 and 611] become effective) and publication in the *Kansas Register*.

The reciprocity allowance for the operation of trust facilities in Kansas would be in effect upon publication in the *Kansas Register*.

## **Background**

The bill was introduced at the request of the Kansas Bankers Association whose representative indicated the bill will ensure that state-chartered banks in Kansas can continue to engage in derivative transactions to the same extent as national-chartered banks. The representative reviewed provisions regulating derivative transactions of national-chartered banks in the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, noting the Act further provided that state-chartered banks only could continue to engage in derivative transactions if the state lending limit law was amended to take into consideration the credit exposure involved in such transactions. The Deputy Bank Commissioner, Office of the State Bank Commissioner, (OSBC) submitted neutral testimony on the bill. The testimony indicated that five Kansas state-chartered banks currently hold investments in derivative products, and examiners (OSBC), as part of the regular bank examinations, review a portion of the bank's asset portfolio for credit risks, including derivative assets.

There were no opponents to the bill at the time of the House Committee hearing.

The Senate Committee on Financial Institutions and Insurance amendments insert provisions allowing reciprocity, in certain instances, for trust services by out-of-state trust entities. The amendment was requested by the Chief Executive Officer of the Trust Company, Manhattan, Kansas.

The fiscal note prepared by the Division of the Budget on the original bill states that the Office of the State Bank Commissioner indicates that the bill would have no fiscal effect on its operations or the operations of any state-chartered bank. The agency indicates that it already reviews derivative transactions during its regular bank examination schedule.