

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 390**

As Agreed to March 24, 2016

Brief*

SB 390 would amend and make technical updates to provisions in the Kansas Banking Code [statutes are noted] and would enact new law to allow banks, credit unions, and other specified financial institutions to conduct savings promotion programs.

Banking Code—Amendments

In addition to making technical amendments, the bill would address:

- **The naming of trust companies and trust service offices.** The bill would modify an application requirement relating to the name of a proposed trust company or a trust company seeking to change its name to specify the selected name must be either different (current law) or substantially dissimilar from that of any other trust company [KSA 2015 Supp. 9-801; KSA 2015 Supp. 9-814]. The bill also would modify an application requirement for a proposed trust service office to specify the selected name cannot be the same as or substantially similar to the name of any other trust company or trust service office doing business in Kansas.

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Further, upon a request of a trust company to relocate an existing trust service office less than one mile from the trust company's current location, the State Bank Commissioner (Commissioner) would be permitted to exempt the trust company from certain application requirements [KSA 2015 Supp. 9-2108].

- **Certain procedures assigned to the State Banking Board.** The bill would eliminate a procedure the State Banking Board must follow in the event two or more applications for new charters are filed at the same time and these applicants intend to serve the same territory (generally, the same city). Additionally, the bill would eliminate a similar procedure associated with the event of a filing of a new charter application and an existing bank files an application to move to the same territory [KSA 2015 Supp. 9-801].
- **Calculation of capital.** The bill would clarify, in statutes addressing the adequacy of a bank's capital and the related calculation of appropriate limits, that intangibles, such as goodwill, would not be included in the calculation of capital. Under current law [KSA 2015 Supp. 9-1104], the definition of "capital" provides that intangibles, such as goodwill, shall not be included in the definition of capital when determining lending limits [KSA 2015 Supp. 9-1101; KSA 2015 Supp. 9-1102].
- **Assets of a trust company.** The bill would add "trust company" to a statute regarding unlawful transactions, to require a bank or trust company to obtain the approval of the Commissioner prior to the sale, gifting, or purchase of an asset to or from persons and entities associated with the bank or trust company (e.g., any employee or to an employee's related interest, any director or to a director's related interest, its parent company, or a

subsidiary of its parent company) [KSA 2015 Supp. 9-1112].

- **Retention of annual oaths.** The bill would delete a requirement that officers' and directors' oaths be filed with the Commissioner within 15 days of the election of the officer or director and would instead require the copy of each oath be retained by the bank or trust company in its records after such election, for review during the next examination by the Commissioner's staff [KSA 2015 Supp. 9-1114].
- **Change of control and merger transaction applications.** The bill would provide clarification regarding the person or applicant associated with an application for the change of control or a merger transaction and whether provisions in the statutes refer to a change of control or the merger transaction application. The bill also would list application requirements associated with the filing of a merger transaction application.

Further, the bill would permit a trust company to merge or consolidate with any trust company (termed by the bill as a "merger transaction"). The bill would further clarify a trust company, with the prior written approval of the Commissioner, would be permitted to merge or consolidate with a trust company chartered either by the Comptroller of the Currency or another state. The bill also would make technical and clarifying amendments to merger transaction provisions which, under current law, refer only to bank applications, by inserting "or trust company" [KSA 2015 Supp. 9-1720; KSA 2015 Supp. 9-1721; KSA 2015 Supp. 9-1722; KSA 2015 Supp. 9-1724].

Savings Promotion

The bill also would enact new law to allow a bank, savings bank, savings and loan association, or a credit union to conduct a savings promotion in which a person would deposit money into a savings account or other savings program in order to obtain entries and participate in the promotion. The bill would require the promotions be conducted in a manner that ensures each entry has an equal chance of winning the designated prize.

The bill would further stipulate the bank, savings bank, savings and loan association, or credit union offering the promotion must:

- Fully disclose the terms and conditions of the promotion to each of its account holders;
- Maintain records sufficient to facilitate an audit of the promotion;
- Ensure that only account holders 18 years of age and older are permitted to participate;
- Not require any consideration; and
- Offer an interest rate and charge fees on any promotion-qualifying account that are approximately the same as for a comparable account that does not qualify for the promotion.

The Commissioner and the Credit Union Administrator would be authorized by the bill to promulgate rules and regulations, as necessary, to effectuate the provisions pertaining to their respective financial institutions. Such rules and regulations must be promulgated by July 1, 2017. The bill would further direct the Commissioner and Credit Union Administrator to collaborate in order to promulgate rules and regulations affecting account holders that are consistent,

other than the type of institution to which the regulations apply.

Conference Committee Action

The Conference Committee agreed to the House amendments to the bill and agreed to:

- Further amend the bill to clarify a notification requirement relating to merger transactions of banks and trust companies. (This amendment clarifies an amendment added by the Senate Committee to include out-of-state trust companies in provisions applying to merger transactions.); and
- Add provisions relating to prize-linked savings accounts and savings promotion programs at certain financial institutions (SB 387, as amended by Senate Committee on Financial Institutions and Insurance).

Background

The Kansas Banking Code (Chapter 9, *Kansas Statutes Annotated*) was recodified by enactment of 2015 SB 240.

SB 390 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Office of the State Bank Commissioner (OSBC), whose representative termed the bill a “clean-up bill” that incorporates suggestions made during the 2015 legislative review of 2015 SB 240. The representative noted the majority of changes are not substantive and generally clarify pronoun usage and insert clarifying comments. The representative reviewed each of the language changes that might be considered substantive. No neutral or opponent testimony was presented at the hearing.

The Senate Committee on Financial Institutions and Insurance amended the bill to permit, subject to the approval of the Commissioner, the merger or consolidation of an out-of-state trust company with a Kansas (chartered) trust company. The amendment was requested by representatives of the Midwest Trust Company and the Benefit Trust Company. Information provided to the Senate Committee indicated Kansas law is silent regarding whether a merger of an out-of-state trust company into a Kansas (chartered) trust company is permissible. A clarification in the law would permit trust companies the opportunity, the representatives indicated, to grow the Kansas-based entity by gaining access to branch or trust representative offices in other states.

The House Committee of the Whole adopted a technical amendment to clarify the prior authorization of the Commissioner, in the event a Kansas trust company seeks to merge or consolidate with an out-of-state trust company, applies either to a trust company chartered by the Comptroller of the Currency or by another state. A representative from the Revisor's Office had requested the amendment to address a printing error in the Senate Committee amendment.

The fiscal note prepared by the Division of the Budget states the OSBC indicates SB 390, as introduced, would have no fiscal effect on its operations or the operations of state banks and trust companies.

SB 387 Background

SB 387 was introduced by Senators Bruce, Bowers, and Wilborn. In the Senate Committee on Financial Institutions and Insurance, Senator Bruce and representatives of the Heartland Credit Union Association and the Kansas Bankers Association appeared in support of the bill. Proponents noted federal law previously had prohibited prize-linked savings accounts and, with the prohibition lifted in 2014, states may now authorize prize-linked savings accounts [the American

Savings Promotion Act, P.L. 113-251, signed into law, December 18, 2014]. Proponents described prize-linked savings accounts as a tool the financial services industry can use to help incentivize customers to establish savings plans and noted 16 states allow financial institutions to offer savings promotion programs. Written-only proponent testimony submitted by the Doorways to Dreams Fund (the D2D Fund) cited research on the savings rate nationwide and Kansas-specific data. The Corporation for Enterprise Development's 2016 Assets and Opportunity Scorecard indicated 35.4 percent of Kansas households do not have a basic savings safety net.

No opponent or neutral testimony was submitted.

The Senate Committee amended the bill to insert a provision requiring the collaboration by regulatory officials in the promulgation of rules and regulations. (This provision is included in the Conference Committee report.)

The House Committee amended the bill to change the publication date to publication in *The Kansas Register*. (This provision is not included in the Conference Committee report; the bill is effective upon publication in the statute book.)

The fiscal note prepared by the Division of the Budget states the OSBC and the Department of Credit Unions indicate SB 387, as introduced, would have no fiscal effect on the regulation of banks, savings and loan associations, or credit unions. The bill would require rules and regulations to be written and adopted; however, the fiscal note states, the costs are estimated to be negligible and could be absorbed within the existing budgets of the OSBC and the Department of Credit Unions.

financial institutions; savings accounts; Credit Union Administrator; State Bank Commissioner

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