



March 12, 2018

To: House Committee on Financial Institutions and Pensions

From: Kathleen A. Taylor, Kansas Bankers Association

Re: **SB 335: Amendments to the Kansas Banking Code**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee in support of SB 335, which makes several amendments to the Kansas Banking Code described in detail below. The Kansas Bankers Association's (KBA) membership includes 270 banks, savings & loans and savings banks operating in Kansas. We are very proud to represent 99% of the commercially chartered banks and savings and loans headquartered in Kansas. Our members employ more than 13,000 Kansans that provide financial services in more than 400 towns and cities across the state.

State Charter for Savings and Loans. The primary purpose for this legislation is to incorporate a state charter for mutually held savings and loan associations and savings banks (savings and loans) into the Kansas Banking Code. To date, all savings and loans operating in Kansas have a Federal charter. We believe that charter choice represented by the dual banking system is important to a healthy, competitive banking environment.

Earlier in 2017, we had savings and loan members come to us and inquire about a state charter option. We were very aware that in 1993, the Kansas Legislature abolished the Kansas Savings and Loan Department and Office of the Savings and Loan Commissioner, and transferred all powers and duties to the Office of the State Bank Commissioner (K.S.A. 75-1309 and K.S.A. 75-1310). We were also aware that there was a Kansas Savings and Loan Code that was in existence (Chapter 17, Articles 51 – 58), but that many of its provisions had not been amended or updated since its inception in 1943. In our quest to determine the best course of action for providing a viable state-charter option for savings and loans, it occurred to us that rather than trying to update a very out dated Savings and Loan Code, we could incorporate a state charter for mutually owned savings and loans into the very recently updated Banking Code.

We approached Commissioner Bowman and her staff with this idea, and collaborated with them on the amendments necessary to achieve a state charter for savings and loans. Specifically, we focused on making certain that any savings and loan that wished to convert from a federal charter to a state charter could maintain its mutual form of ownership and its service corporation. We also provided minimum capital requirements for establishing a state-chartered savings and loan similar

to those for establishing a newly chartered state bank so to be prepared should there be a de novo application.

Very briefly, here are the sections and description of the rationale for each with regard to this topic:

1. K.S.A. 9-701 Definitions. By defining “bank or state bank” as any bank or savings and loan association incorporated under the laws of Kansas, any reference to bank or state bank in the Banking Code will include savings and loans. This is important so that, for example, sections of the Banking Code that deal with matters such as safe deposit boxes will apply to all state-chartered institutions.
2. K.S.A. 9-701 Definitions. The bill includes a definition for “mutual bank” and “savings and loan association or savings bank”. This is the first step in recognizing the mutual form of ownership for savings and loans, and is where the “qualified thrift investment” (QTI) requirement for savings and loans is found. The Kansas Savings and Loan Code as well as federal law requires a savings and loan to generally speaking, keep 65% of its loan portfolio in residential real estate assets.
3. New Section dealing with mutual state bank deposit accounts. Because the nature of mutual ownership means that all depositors are owners/members of an association, both the Kansas Savings and Loan Code and federal law contain these provisions relating to deposit accounts. For example, there is a subsection stating that depositors of a mutual bank are also voting members and have ownership interests in the bank.
4. New Sections dealing with service corporations. Federally chartered savings and loans have traditionally conducted a menu of activities through their service corporations and it is our intent to continue that practice in state law. As you will see in New Section 4, while the list of activities that are permissible through a service corporation are fairly numerous, there is a limitation in New Section 2 that a savings and loan’s investment in a service corporation cannot exceed 3% of the association’s assets, and not less than ½ of any investment which exceeds 1% must be used primarily for community, inner-city and community development purposes.
5. K.S.A. 9-900s Capital. Several amendments to the capital sections of the banking code were necessary to accommodate the mutual type ownership of most savings and loans, and there is a new subsection in K.S.A. 9-901a, to provide for minimum capital requirements for a newly chartered savings and loan – should there be one in the future.

We would respectfully request amending the bill so that the mutual savings and loan charter is called a “mutual bank” rather than a “mutual state bank”. We believe that this is consistent with the use of “stock bank” to describe an institution whose ownership structure is represented by stock as defined on Page 10, Lines 6-7. The suggested amendments are also found on Page 10, Line 8, and in New Section 1 on Page 2. I have attached a balloon amendment for the Committee’s consideration.

Reinstatement of Ability to Invest in Municipal Bonds. This bill also contains an amendment to K.S.A. 9-1101(a)(4)(B) which grants authority for state banks to invest in municipal bonds. As it currently reads, a bank would be prohibited from buying municipal bonds when the ratio of debt exceeds 10% of the municipality’s assessed valuation. Prior to the 2013 recodification of the banking code, this subsection limited the purchase of municipal bonds in this instance to no more

than 15% of the bank's capital and surplus. After some research by members with bond departments, we learned that there are not many municipalities that have a ratio under 10%, and thus this provision would prohibit investment in most municipal bonds. We believe that the striking of the permissible investment of up to 15% was inadvertent, which has led us to request the reinstatement of the 15% limitation so to allow banks to once again, invest in many municipal bonds.

There is also a proposed amendment to the ratio. Once again, after some research, it was clear that the term "assessed valuation" is not defined, nor does it have a common meaning among the industry. We are requesting that term be deleted and "market value" used in its place as this is a readily identifiable value when talking about bonds.

Certificate of Existence and Authority. The bill contains a new section that permits a bank to request a Certificate of Existence and Authority from a person opening a deposit account or conducting other business at a bank on behalf of an entity. There are occasions when an entity may not have a corporate resolution or board of directors' minutes showing that the entity's governing board has authorized the person opening an account at a bank to do so. The entity may be an informal partnership or an entity that does not have regular board meetings but has given authority for one of the partners to conduct banking business.

The bill provides that a person acting on behalf of an entity may provide to the bank, an affidavit (the Certificate) stating the name and address of the entity, the type of entity and where it was formed, the date the entity was organized, the name, address and title of the person executing the affidavit, and a statement that the governing body of the entity has taken action legally required to open the account in the name of the entity. If the bank accepts the affidavit, it may rely on the information provided as being accurate, and the statute will hold the bank harmless unless it is proven later that the bank had actual knowledge that any part of the affidavit was inaccurate.

The proposed language does not require a bank to accept this form, and specifically allows a bank to request additional information including a certificate of good standing if one exists, a taxpayer identification number or other documents. Not all banks will utilize this tool, but some will find it very useful in instances where conventional methods to determine a person's authority to act are not available.

Conclusion. The KBA has and believes that the Kansas legislature also has an interest in maintaining charter choice for all financial institutions. This bill is our effort to ensure that such a choice exists for savings and loans that are doing business in Kansas. In addition, we hope to continue to encourage the safe investment in municipal bonds and to provide an alternative for banks to protect themselves when doing business with a person purporting to represent an entity.

Thank you for your time and attention to this very important matter. The KBA respectfully requests that when the Committee considers action on this bill, it will consider it favorably for passage.

As Amended by Senate Committee

SENATE BILL No. 335

By Committee on Financial Institutions and Insurance

1-26

Session of 2018

- 1 5705, 17-5706, 17-5801, 17-5802, 17-5803, 17-5804, 17-5805, 17-
- 2 5806, 17-5807, 17-5808, 17-5809, 17-5810, 17-5811, 17-5812, 17-
- 3 5814, 17-5816, 17-5817, 17-5818, 17-5819, 17-5820, 17-5821, 17-
- 4 5822, 17-5823, 17-5824, 17-5825, 17-5826, 17-5827, 17-5830, 17-
- 5 5831 and 17-5832 and K.S.A. 2017 Supp. 17-5225d, 17-5610, 17-5701,
- 6 17-5828 and 17-5829.

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

8 New Section 1. (a) Subject to the terms of its articles of incorporation
9 and bylaws, and rules and regulations of the commissioner, a mutual ~~state~~
10 bank may:

11 (1) Raise funds through deposit, share or other accounts, including
12 demand deposit accounts, hereafter referred to as "accounts"; and

13 (2) issue passbooks, certificates or other evidence of accounts.
14 (b) No mutual ~~state~~ bank shall permit any overdraft, including an
15 intra-day overdraft, on behalf of an affiliate, or incur any overdraft in its
16 account at a federal reserve bank or federal home loan bank on behalf of
17 an affiliate.

18 (c) A mutual ~~state~~ bank may require no less than a 14-day notice prior
19 to payment of savings accounts, if the articles of incorporation or bylaws
20 of the bank or the rules and regulations of the commissioner so provide.

21 (d) If a mutual ~~state~~ bank does not pay all withdrawals in full, subject
22 to the right of the bank, where applicable, to require notice, the payment of
23 withdrawals from accounts shall be subject to the provisions prescribed by
24 the bank's articles of incorporation or bylaws or the rules and regulations
25 of the commissioner. Except as authorized in writing by the commissioner,
26 any mutual ~~state~~ bank that fails to make full payment of any withdrawal
27 when due shall be deemed to be in an unsafe or unsound condition.

28 (e) A depositor of a mutual ~~state~~ bank shall be a voting member and
29 shall have such ownership interest in the bank as may be provided in the
30 articles of incorporation and bylaws of the bank.

31 (f) The articles of incorporation and the bylaws of a mutual ~~state~~ bank
32 may provide that all borrowers from the bank are members and, if so, shall
33 provide for their rights and privileges.

34 (g) All savings accounts and demand accounts shall have the same
35 priority upon liquidation.

36 (h) This section shall be a part of and supplemental to the state
37 banking code.

38 New Sec. 2. (a) No savings and loan association or savings bank may
39 make any investment under this section if the association's aggregate
40 outstanding investment under this section in a service corporation would
41 exceed 3% of the association's assets. Not less than 1/2 of the investment
42 permitted under this section that exceeds 1% of the association's assets
43

- 1 AN ACT concerning financial institutions; relating to banks and banking;
- 2 including savings and loan associations and savings banks in the state
- 3 banking code; repealing the savings and loan code; amending K.S.A.
- 4 2017 Supp. 9-701, 9-808, 9-809, 9-901a, 9-902, 9-903, 9-904, 9-905, 9-
- 5 906, 9-907, 9-908, 9-910, 9-911, 9-912, 9-1101, 39-709, 58-3974, 75-
- 6 3036 and 75-3170a and repealing the existing sections; also repealing
- 7 K.S.A. 17-5101, 17-5102, 17-5201, 17-5202, 17-5203, 17-5204, 17-
- 8 5205, 17-5206, 17-5207, 17-5208, 17-5209, 17-5210, 17-5211, 17-
- 9 5212, 17-5213, 17-5214, 17-5215, 17-5216, 17-5217, 17-5218, 17-
- 10 5219, 17-5220, 17-5221, 17-5225, 17-5225a, 17-5225b, 17-5225c, 17-
- 11 5226, 17-5227, 17-5228, 17-5229, 17-5230, 17-5301, 17-5302, 17-
- 12 5303, 17-5304, 17-5305, 17-5306, 17-5307, 17-5308, 17-5309, 17-
- 13 5310, 17-5311, 17-5312, 17-5313, 17-5314, 17-5315, 17-5316, 17-
- 14 5317, 17-5318, 17-5319, 17-5320, 17-5321, 17-5322, 17-5323, 17-
- 15 5324, 17-5325, 17-5326, 17-5327, 17-5328, 17-5329, 17-5401, 17-
- 16 5402, 17-5403, 17-5404, 17-5405, 17-5406, 17-5407, 17-5408, 17-
- 17 5409, 17-5410, 17-5412, 17-5413, 17-5414, 17-5415, 17-5416, 17-
- 18 5417, 17-5418, 17-5419, 17-5420, 17-5421, 17-5422, 17-5423, 17-
- 19 5424, 17-5425, 17-5426, 17-5427, 17-5428, 17-5429, 17-5430, 17-
- 20 5501, 17-5501c, 17-5502, 17-5502a, 17-5503, 17-5504, 17-5505, 17-
- 21 5506, 17-5508, 17-5509, 17-5510, 17-5511, 17-5512, 17-5512a, 17-
- 22 5513, 17-5514, 17-5515, 17-5516, 17-5517, 17-5519, 17-5520, 17-
- 23 5521, 17-5522, 17-5523, 17-5524, 17-5525, 17-5526, 17-5527, 17-
- 24 5528, 17-5529, 17-5530, 17-5531, 17-5532, 17-5533, 17-5534, 17-
- 25 5535, 17-5536, 17-5537, 17-5538, 17-5539, 17-5540, 17-5541, 17-
- 26 5542, 17-5543, 17-5544, 17-5545, 17-5546, 17-5547, 17-5548, 17-
- 27 5549, 17-5550, 17-5551, 17-5552, 17-5553, 17-5554, 17-5555, 17-
- 28 5556, 17-5557, 17-5558, 17-5559, 17-5560, 17-5561, 17-5562, 17-
- 29 5563, 17-5564, 17-5565, 17-5566, 17-5567, 17-5568, 17-5569, 17-
- 30 5570, 17-5571, 17-5572, 17-5601, 17-5602, 17-5603, 17-5604, 17-
- 31 5605, 17-5606, 17-5607, 17-5609a, 17-5611, 17-5612, 17-5613, 17-
- 32 5614, 17-5615, 17-5616, 17-5617, 17-5618, 17-5619, 17-5620, 17-
- 33 5621, 17-5622, 17-5623, 17-5624, 17-5625, 17-5626, 17-5627, 17-
- 34 5628, 17-5629, 17-5630, 17-5631, 17-5632, 17-5633, 17-5634, 17-
- 35 5635, 17-5636, 17-5637, 17-5638, 17-5639, 17-5640, 17-5641, 17-
- 36 5642, 17-5643, 17-5644, 17-5645, 17-5702, 17-5703, 17-5704, 17-

- 1 (ii) construction of improvements;
 2 (iii) resale or leasing to others for such construction of improvements;
 3 or
 4 (iv) use as manufactured home sites, in accordance with a prudent
 5 program of property development;
 6 (B) acquiring improved real estate or manufactured homes to be held
 7 for:
- 8 (i) Rental or resale;
 9 (ii) remodeling, renovating or demolishing and rebuilding for resale
 10 or rental; or
 11 (iii) offices and related facilities of a stockholder of the service
 12 corporation;
 13 (C) maintaining and managing real estate; and
 14 (D) real estate brokerage for property owned by a savings and loan
 15 association or savings bank that owns capital stock of the service
 16 corporation or in which the service corporation otherwise invests;
 17 (5) securities, liquidity management and coin purchase activities:
 18 (A) Execution of transactions in securities on an agency or riskless
 19 principal basis solely upon the order and for the account of customers or
 20 the provision of investment advice. The service corporation must register
 21 with the securities and exchange commission and office of the securities
 22 commissioner, as required by applicable state and federal law and rules
 23 and regulations;
 24 (B) liquidity management;
 25 (C) issuing notes, bonds, debentures or other obligations of securities;
 26 and
 27 (D) purchase or sale of coins issued by the United States treasury;
 28 (6) investments in:
 29 (A) Tax-exempt bonds used to finance residential real property for
 30 family units;
 31 (B) tax-exempt obligations of public housing agencies used to finance
 32 housing projects with rental assistance subsidies;
 33 (C) small business investment companies and new market venture
 34 capital companies licensed by the United States small business
 35 administration;
 36 (D) rural business investment companies licensed by the U.S.
 37 department of agriculture; and
 38 (E) savings accounts of an investing savings and loan association;
 39 (7) community and economic development or public welfare
 40 investment activities that are permissible under federal law;
 41 (8) establishing or acquiring a corporation that is recognized by the
 42 internal revenue service as organized for charitable purposes under 26
 43 U.S.C. § 501(c)(3) of the internal revenue code and making a reasonable

- 1 contribution to capitalize it, provided that the corporation engages
 2 exclusively in activities designed to promote the well-being of
 3 communities in which the owners of the service corporation operate;
 4 (9) acting as an agent for or engaging in activities conducted on
 5 behalf of a customer, other than on an as principal basis; and
 6 (10) any activity reasonably incident to those listed in this subsection
 7 if the service corporation engages in those activities.
 8 (e) This section shall be a part of and supplemental to the state
 9 banking code.
 10 New Sec. 5. As used in sections 2 through 5, and amendments
 11 thereto:
 12 (a) "Invest" means any investment in the capital stock, obligations or
 13 other securities, and any advance of funds to a service corporation,
 14 including the purchase of stock, the making of a loan or other such
 15 advance of funds. "Invest" does not include a payment for rent earned,
 16 goods sold and delivered or services rendered prior to the making of such
 17 payment.
 18 (b) "Savings and loan service corporation" or "service corporation"
 19 means a corporation or limited liability company organized under the laws
 20 of Kansas. The entirety of the capital stock of a savings and loan service
 21 corporation shall be available for purchase only by Kansas-chartered
 22 savings and loan associations, Kansas chartered savings banks and
 23 federally chartered savings and loan associations with home offices in
 24 Kansas. Kansas-chartered and federally chartered savings and loan
 25 associations and Kansas-chartered and federally chartered savings banks
 26 investing in a savings and loan service corporation shall designate the
 27 savings and loan service corporation as a service corporation.
 28 (c) This section shall be a part of and supplemental to the state
 29 banking code.
 30 New Sec. 6. (a) For any deposit account, loan account or other
 31 banking relationship hereinafter referred to as "account," that is opened by
 32 one or more persons acting or purporting to act for or on behalf of an
 33 entity with any financial institution transacting business in this state, such
 34 person may provide the financial institution with a certificate to provide
 35 evidence of the existence of the entity and the authority of the person to
 36 act for or on behalf of the entity with respect to the account.
 37 (b) The certificate of existence and authority shall be an affidavit
 38 executed by such person and shall include the following, as applicable:
 39 (1) The name and mailing address of the entity;
 40 (2) the type of entity and the state, country or other governmental
 41 authority, under which laws, the entity was formed;
 42 (3) the organization date of the entity;
 43 (4) the name, mailing address and office or other position held by the

1 withdrawal. If such additional early withdrawal penalties are not
 2 contractually imposed, the account ceases to be a time deposit, but may
 3 become a savings deposit if the account meets the requirements for a
 4 savings deposit.

5 (h) "Savings deposit" means a deposit or account with respect to
 6 which the depositor is not required by the deposit contract, but may at any
 7 time, be required by the depository institution to give written notice of an
 8 intended withdrawal not less than seven days before such withdrawal is
 9 made and that is not payable on a specified date or at the expiration of a
 10 specified time after the date of deposit.

11 (i) "Public moneys" means all moneys coming into the custody of the
 12 United States government or any board, commission or agency thereof,
 13 and also shall mean all moneys coming into the custody of any officer of
 14 any municipal or quasi-municipal or public corporation, the state or any
 15 political subdivision thereof, pursuant to any provision of law authorizing
 16 any such official to collect or receive the same.

17 (j) "Municipal corporation" means any city incorporated under the
 18 laws of Kansas.

19 (k) "Quasi-municipal corporation" means any county, township,
 20 school district, drainage district, rural water district or any other
 21 governmental subdivision in the state of Kansas having authority to
 22 receive or hold moneys or funds.

23 (l) "Certificate of authority" means a certificate signed and sealed by
 24 the commissioner evidencing the authority of a bank or trust company to
 25 transact a general banking or trust business as provided by law.

26 (m) "Trust business" means engaging in, or holding out to the public
 27 as willing to engage in, the business of acting as a fiduciary for hire,
 28 except that no accountant, attorney, credit union, insurance broker,
 29 insurance company, investment adviser, real estate broker or sales agent,
 30 savings and loan association, savings bank, securities broker or dealer, real
 31 estate title insurance company or real estate escrow company shall be
 32 deemed to be engaged in a trust company business with respect to
 33 fiduciary services customarily performed by those persons or entities for
 34 compensation as a traditional incident to their regular business activities.

35 (n) "Community and economic development entity" means an entity
 36 that makes investments or conducts activities that primarily benefit low-
 37 income and moderate-income individuals, low-income and moderate-
 38 income areas, or other areas targeted by a governmental entity for
 39 redevelopment, or would receive consideration as "qualified investments"
 40 under the community reinvestment act pub. L. 95-128, title VIII, 91 stat.
 41 1147, 12 U.S.C. § 2901 et seq., and any state tax credit equity fund
 42 established pursuant to K.S.A. 74-8904, and amendments thereto.

43 (o) "Depository institution" means any state bank, national banking

1 association, state savings and loan or federal savings association, without
 2 regard to the state where the institution is chartered or the state in which
 3 the institution's main office is located.

4 (p) "Student bank" means any nonprofit program offered by a high
 5 school accredited by the state board of education, where deposits are
 6 received, checks are paid or money is lent for limited in-school purposes.

7 (q) "Stock bank" means a bank that has an ownership structure
 8 represented by stock.

9 (r) "Mutual ~~bank~~ bank" means a bank that does not have an
 10 ownership structure represented by stock.

11 (s) "Savings and loan association" or "savings bank" means a bank
 12 that is required to have qualified thrift investments that equal or exceed
 13 65% of its portfolio assets, and its qualified thrift investments are required
 14 to equal or exceed 65% of its assets on a monthly average basis in nine
 15 out of every 12 months. For purposes of this subsection, "portfolio assets"
 16 and "qualified thrift investments" have the same meanings as in 12 U.S.C.
 17 § 1467a, as amended.

18 Sec. 8. K.S.A. 2017 Supp. 9-808 is hereby amended to read as
 19 follows: 9-808. (a) Any national bank, federal savings association or
 20 federal savings bank organized under the laws of the United States and
 21 located in this state may become a state bank upon the affirmative vote of
 22 not less than $\frac{2}{3}$ of the institution's outstanding voting stock or members.
 23 Any national bank, federal savings association or federal savings bank
 24 desiring to become a state bank shall apply to the commissioner for
 25 permission to convert to a state bank and:

26 (1) Shall submit a transcript of the minutes of the meeting of the
 27 institution's stockholders or members showing approval of the proposed
 28 conversion;

29 (2) The name selected for the bank shall not be the name of any other
 30 bank: (A) doing business in the same city or town; or

31 (B) within a 15-mile radius of the location of the converted
 32 institution. The name shall be accepted or rejected by the commissioner,
 33 although any bank may request exemption from the commissioner from
 34 this paragraph; and

35 (3) Provide any other information required in the application form
 36 prescribed by the commissioner.

37 (b) A federal savings association or federal savings bank operating in
 38 a mutual form and which seeks to become a stock bank must also convert
 39 to a stock form prior to converting to a state bank and shall submit
 40 appropriate documentation to the commissioner to show that the
 41 appropriate federal regulator has approved such mutual to stock
 42 conversion.

43 (c) Upon receipt of each of the items required by this section the