



January 30, 2018

To: Senate Committee on Financial Institutions and Insurance

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.

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.