

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 335**

As Agreed to April 6, 2018

Brief*

SB 335 would amend the State Banking Code related to savings and loan associations, savings banks, and the Kansas Money Transmitter Act (KMTA).

Savings and Loan Associations and Savings Banks

The bill would amend and create law to incorporate savings and loan associations and savings banks into the State Banking Code. The bill would repeal the existing Savings and Loan Code (Chapter 17, Articles 51-58, Kansas Statutes Annotated).

Activities of Mutual Banks [New Section 1]

The bill would specify the activities in which a mutual bank may engage. The bill would authorize a mutual bank, subject to the terms of its articles of incorporation (articles) and bylaws, and rules and regulations of the State Bank Commissioner (Commissioner), to raise funds through deposit, share, or other accounts, including demand deposit accounts (referred to as "accounts") and issue passbooks, certificates, or other evidence of accounts.

The bill would also prohibit a mutual bank from permitting overdrafts, as specified; describe notice requirements for payment of savings accounts; describe

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requirements for account withdrawals and state that any mutual bank failing to make full payment of any withdrawal when due would be deemed to be in an unsafe or unsound condition; require a depositor of a mutual bank to be a voting member and have ownership interest in the bank, as may be provided for in the articles and bylaws of the bank; permit the articles and bylaws of a mutual bank to require all borrowers from the bank to be members and provide for their rights and privileges; and specify all savings accounts and demand accounts have the same priority upon liquidation.

Definitions [New Section 5]

The bill would establish definitions for the following terms (applicable to New Sections 2-5 of the bill):

- “Invest” – any investment in the capital stock, obligations, or other securities, and any advance of funds to a service corporation, including the purchase of stock, the making of a loan, or other such advance of funds. The term does not include a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment; and
- “Savings and loan service corporation” or “service corporation” – a corporation or limited liability company organized under the laws of Kansas. The bill would require the entirety of the capital stock of a savings and loan service corporation to be available for purchase only by Kansas-chartered savings and loan associations, Kansas-chartered savings banks, and federally chartered savings and loan associations with home offices in Kansas. The bill would require Kansas-chartered and federally chartered savings and loan associations and Kansas-chartered and federally chartered savings banks investing in a savings and loan service corporation to designate the savings and loan service corporation as a service corporation.

Investment in a Service Corporation by Savings and Loan Association or Savings Bank [New Section 2]

The bill would state no savings and loan association or savings bank is permitted to make any investment in a service corporation if the association's aggregate outstanding investment would exceed 3.0 percent of the association's assets. The bill would further require that not less than half of the investment permitted exceeding 1.0 percent of the savings and loan association's assets must be used primarily for community, inner city, and community development purposes.

Application by a Savings and Loan Association to the Commissioner [New Section 3]

The bill would require a savings and loan association to apply to the Commissioner for approval at least 30 days prior to acquiring, establishing, or commencing new activity with an existing service corporation. The bill would prohibit the association from engaging in activity with the service corporation without the Commissioner's approval.

The bill would require such application to include:

- A complete description of the savings and loan association's investment in the service corporation;
- The proposed activities of the service corporation;
- The organizational structure and management of the service corporation;
- The relationship between the savings and loan association and the service corporation; and
- Any other information the Commissioner deems necessary to describe the proposal.

The bill would require the service corporation to be operated in a manner that demonstrates to the public it maintains a separate corporate identity from the applicant and not commingle business transactions, accounts, and records with a savings and loan association.

The bill would permit the Commissioner, in considering an application, to limit a savings and loan association's investment in a service corporation or refuse to permit any activity of a service corporation for supervisory, legal, or safety and soundness reasons.

Activities of a Service Corporation [New Section 4]

The bill would specify the activities in which a service corporation may engage.

The bill would authorize the service corporation to engage in any activity that a savings and loan association may conduct directly and would be subject to the Commissioner's supervision. The savings and loan association would be required to notify the Commissioner if the service corporation fails to meet the requirements specified under this section of the bill. Further, if the service corporation is unable to comply with requirements of this section of the bill within 90 days of initial failure to meet such requirements, the savings and loan association would be required to dispose of its investment in the service corporation.

The bill would specify that after a savings and loan association has received approval from the Commissioner, the service corporation may engage in a range of activities in these categories: business activities, when such activities are limited to financial documents, financial clients, or are generally financially related to certain activities; credit-related activities; consumer services; real estate-related services; securities, liquidity management, and coin purchase activities; certain investments; community and economic development,

or public welfare investment activities permissible under federal law; establishing or acquiring a corporation recognized by the Internal Revenue Service as organized for charitable purposes under certain circumstances; acting as an agent for or engaging in activities conducted on behalf of a customer, other than on an as principal basis; and any other activity reasonably incident to other listed services if the service corporation engages in those activities.

Certificate of Existence [New Section 6]

The bill would authorize a person acting on behalf of an entity to provide the financial institution with a certificate of existence of the entity and the authority of the person to act on behalf of the entity related to the opening of any deposit account, loan account, or other banking relationship.

The bill would require the certificate of existence and authority to be in the form of an affidavit and include certain information related to the entity and the person executing the affidavit. Additionally, the bill would require the affidavit to include a statement that the board of directors, managers, members, general partners, or other governing body of the entity opening the account has taken all required legal action to open the account in the name of the entity and the person authorized to engage in transactions related to the account.

The bill would specify, if the financial institution accepts the certificate of existence and authority, the financial institution is permitted to open and administer the account relying on the provided information. The financial institution would not be liable for any inaccurate information, unless the financial institution had actual knowledge of the inaccuracy or had sufficient knowledge to cause a reasonably prudent person to doubt the accuracy of such information.

Additionally, the bill would not prohibit a financial institution from requesting additional information or requiring other agreements in order to establish an account for an

entity, including a resolution, certificate of good standing, request for taxpayer identification number, entity agreements or documents or parts evidencing the existence of the entity or the authority of the person executing the certificate, and an indemnification.

The bill would define “entity” and “financial institution” for this purpose.

State Banking Code Definitions [Section 7]

The bill would amend the term definition of “bank” in the State Banking Code to be “bank or state bank” and mean a bank, savings and loan association, or savings bank incorporated under the laws of Kansas.

The bill would also add the following definitions to the State Banking Code:

- “Stock bank” – a bank that has an ownership structure represented by stock;
- “Mutual bank” – a bank that does not have an ownership structure represented by stock; and
- “Savings and loan association” or “savings bank” – a bank that is required to have qualified thrift investments that equal or exceed 65.0 percent of its portfolio assets, and its qualified thrift investments are required to equal or exceed 65.0 percent of its assets on a monthly average basis in 9 out of every 12 months.

Conversion to a State Bank [Section 8]

The bill would amend the State Banking Code relating to any national bank, federal savings association, or federal savings bank becoming a state bank by specifying not less than two-thirds of the institution’s members may ratify such a

change and would update the requirements of the transcription of minutes. Further, the bill would clarify a federal savings association or federal savings bank operating in a mutual form and which seeks to become a stock bank must convert to a stock prior to converting to a state bank.

Conversion to a National Bank [Section 9]

The bill would specify that any state bank may convert to a federal savings and loan association or federal savings bank, in addition to a national bank as in continuing law. The bill would specify not less than two-thirds of the bank's members may ratify such a change. The application process and notice of conversion would apply to federal savings and loan associations and federal savings banks in the same manner as to a national bank.

Capital Requirements [Sections 10-20]

The bill would amend the capital requirements specified in the State Banking Code to incorporate the mutual form of ownership of most savings and loans.

Additionally, the bill would provide for minimum capital requirements for mutual banks organized on or after July 1, 2018, which would require founding members of the bank to pledge funds at the time of organization the greater of \$3,000,000 or an amount equal to 8.0 percent of the proposed bank's estimated deposits five years after organization.

The bill would amend the definition of "capital" to mean, for a mutual bank, the total of the funds pledged by its members and its undivided profits.

Investment in Municipal Bonds [Section 21]

The bill would permit banks to invest in bonds, securities, or other evidences of indebtedness, up to 15.0 percent of the bank's capital stock and surplus. The bill would also update the reference from "assessed valuation" to "market value."

Deletion of Internal References [Sections 22-25]

Enactment of the bill would repeal the current Savings and Loan Code and references to it in other areas of law.

Amendments to the KMTA

The bill would make amendments to the KMTA under the State Banking Code.

KMTA Rules and Regulations; Informal Agreements [Section 26]

The bill would specify the Commissioner is allowed to issue an order, after notice and an opportunity for hearing, to address any violation of rules and regulations adopted pursuant to the KMTA.

The bill would allow the Commissioner to enter into an informal agreement at any time with a person to resolve a matter arising under the KMTA, rules and regulations adopted pursuant to the KMTA, or an order issued pursuant to the KMTA.

The bill would specify the adoption of an informal agreement would not be subject to the Kansas Administrative Procedure Act or the Kansas Judicial Review Act nor considered an order or other agency action. The informal agreement would be considered confidential examination material, which is confidential by law and privileged. The bill

would specify such informal agreements would not be subject to the Open Records Act, subpoena, discovery, or admissible in evidence in any private civil action.

The authority of the Commissioner to enter into informal agreements prescribed by the bill would sunset on July 1, 2023, unless the Legislature reviews and reenacts the provision.

Commissioner's Designees [Section 27]

The bill would permit designees of the Commissioner to administer, interpret, and enforce the KMTA.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 335, as amended by the House Committee on Financial Institutions and Pensions, and further agreed to insert the contents of SB 284, as amended by the Senate Committee on Financial Institutions and Insurance.

Background

The bill contains provisions of SB 335 and SB 284.

SB 335 (Savings and Loan Associations and Savings Banks)

SB 335 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Bankers Association (KBA). In the Senate Committee hearing, representatives of the KBA and the Office of the State Bank Commissioner (OSBC) testified in support of the bill. The proponents stated the nine savings and loan associations currently in Kansas are federally chartered, and the bill would give the option of a state charter; the current

Savings and Loan Code has not been amended or updated since its inception in 1943; and the investment in municipal bonds provision is a reinstatement of law that was deleted during the State Banking Code's recodification.

No neutral or opponent testimony was provided.

The Senate Committee amended the bill to make a technical amendment related to investment in a service corporation. [Note: The Conference Committee retained this amendment.]

In the House Committee on Financial Institutions and Pensions hearing, representatives of the KBA and OSBC testified in support of the bill. The KBA representative requested an amendment to clarify reference to a mutual savings and loan charter as a "mutual bank" (termed "mutual state bank" in the Senate versions of the bill). The representative explained this language would make the reference consistent with the use of "stock bank" in the bill and State Banking Code.

The House Committee adopted the amendment requested by KBA to clarify references to mutual banks. [Note: The Conference Committee retained this amendment.]

The fiscal note was published after the Senate Committee took action on the bill. According to the fiscal note prepared by the Division of the Budget on SB 335, as introduced, the OSBC indicates enactment of the bill would have the potential to increase costs to regulate savings and loan associations if they convert to a state-chartered bank. However, the costs to perform additional examinations, oversight, and long-term training requirements are estimated to be negligible and could be accomplished with existing examination staff and could be absorbed within existing resources. The OSBC estimates that one to three savings and loan associations may convert to a state-chartered bank during FY 2019 under the provisions of the bill.

The OSBC indicates enactment of SB 335 has the potential to increase agency revenues by approximately \$28,000 from application fees and associated annual assessment fees from savings and loan associations that convert to a state charter. Currently, the OSBC assesses a fee of \$500 for an application to convert to a state charter. The OSBC estimates up to \$1,500 in additional revenue in FY 2019 if three institutions submit state charter applications. The annual assessment fees are based on the asset size of the institution. If the three smallest asset sized institutions convert to a state charter based on the current fee structure, the agency would generate approximately \$26,500 from assessment fees. Any fiscal effect associated with enactment of SB 335 is not reflected in *The FY 2019 Governor's Budget Report*.

SB 284 (Amendments to the KMTA)

SB 284 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate Committee hearing, a representative of the OSBC testified in support of the bill. The representative stated the bill would help the OSBC align agency staff and responsibilities to administer the KMTA and provide another option to bring companies into compliance with state law and regulation. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to make a statutory reference change related to confidentiality from the Kansas Mortgage Business Act to the KMTA. [*Note*: The Conference Committee retained this amendment.]

In the House Committee on Financial Institutions and Pensions hearing, OSBC representatives provided proponent testimony and answered questions about the OSBC entering into informal agreements with companies conducting money transmission in Kansas. No neutral or opponent testimony was provided.

Following the hearing, the Commissioner submitted additional information to the House Committee, including the steps that currently could be taken to address examination findings. Under the bill, one additional step could include use of an informal agreement known as a Memorandum of Understanding (MOU). According to the OSBC, an MOU may be appropriate if OSBC management determines the entity is committed to and capable of implementing effective corrective measures.

The OSBC comment further noted the OSBC is authorized to issue informal agreements under the State Banking Code, the Kansas Mortgage Business Act, and the Credit Services Organization Act, and cited examples of issues the OSBC has resolved with informal agreements, including unlicensed activity; less than satisfactory financial condition; inadequate recordkeeping; and lack of supervision of agents, service providers, or employees. The OSBC comment also identified findings and violations the agency would not address with an informal agreement.

The House Committee amended the bill to clarify the type of matter that could be resolved by an informal agreement between the OSBC and its licensee by excluding matters constituting a criminal offense. [Note: The Conference Committee did not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 284, as introduced, the OSBC indicates the costs associated with implementing the requirements of the bill would be negligible and could be absorbed within the OSBC's existing budget.

State Banking Code; savings and loan associations and savings banks; mutual banks; Kansas Money Transmitter Act

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