

State Banking Code; Savings and Loan Associations and Savings Banks; Mutual Banks; Kansas Money Transmitter Act; SB 335

SB 335 amends 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 amends and creates law to incorporate savings and loan associations and savings banks into the State Banking Code. The bill repeals the Savings and Loan Code (Chapter 17, Articles 51-58, *Kansas Statutes Annotated*).

Activities of Mutual Banks

The bill specifies the activities in which a mutual bank may engage. The bill authorizes 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 also prohibits a mutual bank from permitting overdrafts, as specified; describes notice requirements for payment of savings accounts; describes requirements for account withdrawals and states that any mutual bank failing to make full payment of any withdrawal when due will be deemed to be in an unsafe or unsound condition; requires 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; permits the articles and bylaws of a mutual bank to require all borrowers from the bank to be members and provides for their rights and privileges; and specifies all savings accounts and demand accounts have the same priority upon liquidation.

Definitions

The bill establishes definitions for the following terms (applicable to this portion of the bill):

- “Invest” means 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” means a corporation or limited liability company organized under the laws of Kansas. The bill requires 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 requires 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

The bill states 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 exceeds 3.0 percent of the association's assets. The bill further requires 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

The bill requires 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 prohibits the association from engaging in activity with the service corporation without the Commissioner's approval.

The bill requires 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 requires 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 permits 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

The bill specifies the activities in which a service corporation may engage. The bill authorizes the service corporation to engage in any activity that a savings and loan association may conduct directly and is subject to the Commissioner's supervision. The savings and loan association is 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 is required to dispose of its investment in the service corporation.

The bill specifies 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

The bill authorizes 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 requires 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 requires 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 specifies, 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 will 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 does 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 defines “entity” and “financial institution” for this purpose.

State Banking Code Definitions

The bill amends 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 also adds the following definitions to the State Banking Code:

- “Stock bank” means a bank that has an ownership structure represented by stock;
- “Mutual bank” means a bank that does not have an ownership structure represented by stock; and
- “Savings and loan association” or “savings bank” means 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

The bill amends 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 updates the requirements of the transcription of minutes. Further, the bill clarifies 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 bank prior to converting to a state bank.

Conversion to a National Bank

The bill specifies 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 specifies not less than two-thirds of the bank’s members may ratify such a change. The application process and notice of conversion applies to federal savings and loan associations and federal savings banks in the same manner as to a national bank.

Capital Requirements

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

Additionally, the bill provides for minimum capital requirements for mutual banks organized on or after July 1, 2018, which requires 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 amends 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

The bill permits 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 also updates the reference from "assessed valuation" to "market value."

Deletion of Internal References

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

Amendments to the KMTA

The bill makes amendments to the KMTA under the State Banking Code.

KMTA Rules and Regulations; Informal Agreements

The bill specifies 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 allows 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 specifies the adoption of an informal agreement is not subject to the Kansas Administrative Procedure Act or the Kansas Judicial Review Act, nor considered an order or other agency action. The informal agreement is considered confidential examination material, which is confidential by law and privileged. The bill specifies such informal agreements are not 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 sunsets on July 1, 2023, unless the Legislature reviews and reenacts the provision.

Commissioner's Designees

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