

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 20

As Amended by House Committee on Financial
Institutions and Pensions

Brief*

SB 20, as amended, would make amendments to the Kansas Banking Code and amendments to three acts subject to the oversight of the State Bank Commissioner—the Kansas Money Transmitter Act, the Kansas Mortgage Business Act, and the Kansas Credit Services Organization Act.

Kansas Banking Code—Amendments (Sections 1-4)

The bill would make several amendments to the Kansas Banking Code. The bill would update language concerning a bank's investment in foreign bonds to clarify the amount cannot exceed one percent of the bank's capital stock and surplus; amend language relating to lending limits to provide an exemption for segregated deposits; and make other clarifying language updates technical in nature. Additionally, the bill would require any bank or trust company owning tangible property to insure that property against loss. Further, the bill would require banks and trust companies to record minutes of annual stockholders' meetings and detail any action taken by the stockholders, including the election of directors.

The bill would also amend the Kansas Banking Code to allow state-chartered banks to purchase tax credits for certain historic structure rehabilitation expenditures provided for in the Kansas Income Tax Act. The bill would limit the amount of

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

tax credits a state-chartered bank could hold at a given time to no more than 25 percent of the total sum of the bank's capital stock, surplus, undivided profits, 100 percent of the allowance for loan and lease loss, capital notes and debentures, and reserve for contingencies.

Kansas Money Transmitter Act—Amendments (Sections 5-7)

The bill would amend provisions of the Kansas Money Transmitter Act (KMTA). The bill would add a definition of “service provider” to mean any person providing services specified in continuing law (those that have a written agreement with banks, building and loan associations, savings and loan associations, savings banks, or credit unions to provide for receipt and delivery of funds, network access, processing, clearance, or settlement services in support of money transmission activities) used by an exempt entity or its agent to provide money transmission services to the exempt entity's customers. The definition specifies a service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or agent.

Additionally, the bill would require a late fee for renewal applications received between December 1 and 31 of each year; require a late fee for incomplete applications as of December 1 of each year; change a date relating to the reinstatement of expired licenses to the last day of February; and eliminate language basing the licensing fee on the number of agent locations.

Further, the bill would authorize the State Bank Commissioner (Commissioner) to determine the completeness of any application submitted under the KMTA. The Commissioner would be required to take into consideration compliance with all application requirements and any other facts and circumstances deemed appropriate by the Commissioner. The bill specifies an application would

be considered abandoned and the application fee would not be returned if the applicant fails to complete the application for a new license or for a change of control of a license within 60 days after the Commissioner provides written notice of an incomplete application. The license would expire on December 31 if the applicant fails to file a complete renewal application on or before December 31 of that year. An abandoned application would not preclude an applicant from reapplying for licensure.

Kansas Mortgage Business Act—Amendments (Sections 8-12)

The bill would amend provisions of the Kansas Mortgage Business Act (KMBA). The bill would clarify no other license, other than a KMBA license, would be required to conduct mortgage business in Kansas.

The bill would require the Commissioner to deem an application for mortgage company or loan origination licensure or registration to be abandoned if the applicant fails to complete the application within 60 days after the Commissioner provides notice to the applicant of an incomplete application. If the Commissioner deems the application to be abandoned, the applicant would be permitted to reapply for licensure or registration and pay a nonrefundable fee of not less than \$50, or the applicant may make a written request for a hearing pursuant to the Kansas Administrative Procedure Act (KAPA).

Additionally, the bill would permit applicants and licensees to use an alternative accounting system, other than the generally accepted accounting principles (GAAP), to provide evidence of a minimum net worth of \$50,000. The applicant or licensee would be required to demonstrate the alternative accounting system meets or exceeds GAAP.

Further, the bill would require information contained in the annual reports submitted by each KMBA licensee to

remain confidential: however, publication of composite information would be permitted. This provision would sunset on July 1, 2022.

Kansas Credit Services Organization Act—Amendments (Sections 13-25)

The bill would enact and amend law relating to the Kansas Credit Services Organization Act (KCSOA). Descriptions of specific bill provisions follow.

Definitions

The bill would add and amend definitions to be used in the KCSOA. The bill would amend the definition of “Commissioner” to specify the Commissioner is the State Bank Commissioner or designee. The designee would be the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner (OSBC). Additionally, the bill would update the definitions for “debt management service” and “trust account,” and delete the definitions for “related interest” and “registrant.”

The bill would establish definitions for the following terms:

- “Licensee” – a person who is licensed by the Commissioner as a Credit Service Organization (CSO). [The bill would replace all references of registrant in the KCSOA with licensee, in addition to replacing “registration” with “licensing,” “license,” or “licensure,” and “registered” with “licensed” to reflect this definition change.];
- “Nationwide Mortgage Licensing System and Registry” [also known as NMLSR] – a mortgage licensing system developed and maintained by the

Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other financial service providers.

Licensee Requirements

Application for Licensing Fee

The bill would remove the \$100 nonrefundable application fee for licensing CSOs and would authorize the Commissioner to set the licensing fee through the adoption of rules and regulations.

License Expiration

The bill would specify a CSO license issued under the KCSOA would expire on April 30 of each year.

Surety Bond Requirements

The bill would amend the requirements for a licensee to file a surety bond with the Commissioner. The bill would expand the requirement that a surety bond may not be terminated without 30 days prior written notice to the Commissioner by specifying such termination would not affect the surety's liability for violations of the KCSOA occurring prior to the effective date of cancellation. Additionally, principal and surety would be required to be and remain liable for a period of two years from the date of any action or inaction of the principal giving rise to a claim under the surety bond.

Duties of the Licensee Relating to Debt Management Services

The bill would amend provisions relating to the duties of a licensee relating to debt management services. The bill

would amend the KCSOA to state no person required to be licensed by the Act shall engage in debt management services, unless the person has met all criteria. The bill would amend the criteria by requiring a licensee to include all outstanding debt obligations, as listed on the consumer's credit report, as well as any debt obligations identified by the consumer, for the purpose of the initial budget plan. The bill would update reference to the plan between the consumer and licensee to refer to a debt management services agreement. Additionally, the bill would update the requirements for the written debt management services agreement to include the full legal name and doing business as "dba" name of the licensee.

The bill would require the name and license number of the licensee on record with the Commissioner on all solicitations and published advertisements concerning a CSO directed at Kansas residents, including those solicitations and published advertisements on the internet or by other electronic means. Each licensee would be required to maintain a record of all solicitations or advertisements for 36 months. The bill would specify "advertising" does not include business cards or promotional items. Solicitations and advertisements would be prohibited from containing false, misleading, or deceptive information. Further, the bill would prohibit a licensee conducting CSO business in Kansas from using any name other than the name stated on the license.

Prohibited Acts

The bill would update the prohibition on using false or misleading representation in the offer or sale of services of a debt management services agreement or CSO business by removing a specific reference to erasing bad credit. The bill would also prohibit a licensee giving a reward, bonus, premium, commission, or any other consideration for the referral of a consumer to the licensee's CSO business and charge the consumer for the amount.

Disbursement of Certain Funds

The bill would increase the amount of time the CSO would have to disburse consumer funds to the consumer's creditors from 10 to 20 calendar days, or the latest date before the consumer would incur any fee, charge, or penalty due to delay in payment.

Reporting Requirements

Reports to the Consumer

The bill would amend the requirements for licensee reports provided to a consumer. The bill would specify the report provided to the consumer must contain information about the total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer, and the amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

Annual Report to the Commissioner

The bill would amend the annual reporting requirement by changing the date, from March 1 to April 1, for the annual report filed with the Commissioner each year relating to CSO business conducted by the licensee during the preceding calendar year.

The bill would also specify information contained in the annual report would be confidential and may only be published in composite form. The confidentiality provision would sunset on July 1, 2022.

Reporting Requirement Based on Certain Events

The bill would add two events which would require a licensee to file a written report with the Commissioner within 15 days after the event occurred. These two events would be

a change in the licensee's name or legal entity status, and the addition or loss of any owner, officer, partner, or director.

Fees Charged to the Consumer

The bill would amend and enact new law relating to fees charged by CSOs to consumers. The bill would increase the fee, from not exceeding \$50 to not exceeding \$75, that the licensee could charge a consumer for a one-time consultation. The bill would also increase the total maintenance fee a licensee may charge a consumer from \$20 to \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the licensee and the consumer, whichever is less.

The bill would replace a specific fee to be charged to a consumer with language stating the licensee may charge the consumer with a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, and other counseling services authorized by the Commissioner.

Additionally, the bill would permit the CSO to charge a consumer up to \$30 one time for each insufficient payment, and up to \$5 to process a payment by the consumer to the CSO through electronic means, if authorized by the consumer. The bill would specify no charge would be assessed when the consumer has agreed to make all scheduled payments by electronic means.

The CSO would be allowed to waive any fees if the CSO determines the consumer is unable to pay the fees.

Powers, Duties, and Action of the Commissioner

The bill would amend and enact new language relating to the Commissioner's powers and duties under the KCSOA.

Investigation and Examination; Costs; Confidentiality

The bill would remove language relating to the specific reasons for when the Commissioner is permitted to investigate and examine the CSO's operations, books, and records.

The bill would also update language relating to the costs the Commissioner may charge to an applicant or licensee. The Commissioner would be permitted to charge reasonable costs of investigation, examination, and administration of the KCSOA to the applicant or licensee, in an amount the Commissioner would be permitted to determine is sufficient to meet the budget requirements of the Commissioner for each fiscal year.

The bill would require the examination reports and correspondence regarding the reports made by the Commissioner or the Commissioner's designees to be confidential. The confidential materials subsection would sunset on July 1, 2022.

Nationwide Mortgage Licensing System and Registry

The bill would authorize the Commissioner to utilize the NMLSR as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any government agency, in order to reduce the points of contact the Federal Bureau of Investigation has with individual states.

The Commissioner would be permitted to use the NMLSR as a channeling agent for requesting and distributing information regarding CSO licensing to and from any source directed by the Commissioner.

Additionally, the Commissioner would be authorized to establish relationships or contacts with the NMLSR or other entities to collect and maintain records and process

transaction fees or other fees related to applicants, licensees, or other persons under the KCSOA, and to take other actions as may be reasonably necessary to participate in the NMLSR.

Informal Agreements

The Commissioner would be authorized to enter into a plan of action, known as an informal agreement, with any person to address violations of the KCSOA. An informal agreement would not be subject to provisions of KAPA or the Kansas Judicial Review Act and would not be considered an order or other agency action. The informal agreement would be confidential and privileged; not subject to the Open Records Act, subpoena, and discovery; and not admissible in evidence in any private civil action. This subsection would sunset on July 1, 2022.

Kansas Administrative Procedure Act

The Commissioner would be authorized to issue, amend, and revoke written administrative guidance documents in accordance with the applicable provisions of the KAPA.

Commissioner Action Following Notice

If the Commissioner determines, after notice and opportunity for a hearing pursuant to the KAPA, a person has engaged in, is engaging, or about to engage in an act in violation of the KCSOA, rule and regulation, or order, the Commissioner may require, by order, the following new penalties:

- If such violation is committed against elder or disabled persons as defined in KSA 2016 Supp. 50-676 (persons who are 60 years of age or older; persons who have physical or mental impairment,

or both, which substantially limits one or more of such person's major life activities), the Commissioner may impose an additional penalty, not to exceed \$10,000 for each violation, in addition to any civil penalty provided by law; or

- Issue an order requiring the person to pay restitution for any loss arising from the violation, or requiring the person to disgorge any profits arising from the violation. The order may include the assessment of interest, not to exceed 8 percent per annum from the date of the violation.

Background

SB 20—Kansas Banking Code Amendments

SB 20 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate and House Committee hearings, a representative of the OSBC testified in favor of the bill stating the provisions relating to insured tangible property and stockholders' minutes are currently in administrative rules and regulations. Additionally, the representative noted the change in lending limits would allow banks to use checking, money market, and savings accounts as collateral as long as a hold is placed on the deposit to prevent the collateral from being dispersed. No neutral or opponent testimony was provided.

The House Committee on Financial Institutions and Pensions held hearings on SB 20 and other Senate bills relating to the authority of the Commissioner and amendments to the Banking Code.

The House Committee amended the bill to insert four separate bills into the contents of SB 20, as recommended by the Senate Committee on Financial Institutions and Insurance. This House Committee action inserted the following bills: SB 18 (as recommended by the Senate

Committee); SB 21 (as amended by the Senate Committee); SB 67 (as recommended by the Senate Committee with a technical amendment by the House Committee); and SB 87 (as amended by the Senate Committee). The House Committee also authorized technical amendments to incorporate the provisions of the four additional bills and to update a statutory reference in the provision relating to tax credits.

According to the fiscal note prepared by the Division of the Budget on the original bill, as introduced, the OSBC indicates enactment of SB 20 would have no fiscal effect on the OSBC operations or the operations of state banks and trust companies. Fiscal information for the bills inserted by the House Committee amendment is included with the background information that follows.

SB 18—Kansas Mortgage Business Act Amendments

SB 18 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate and House Committee hearings, a representative of the OSBC testified in favor of the bill, stating the bill would provide clarity to the KMBA and improve the OSBC's ability to regulate companies engaged in mortgage business in Kansas. No opponent or neutral testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates the costs associated with implementing SB 18 would be negligible and could be absorbed within OSBC's existing budget. The OSBC indicates the bill has the potential to increase revenues to the Bank Commissioner Fee Fund (Fund) from additional application fees from applicants whose original application has been abandoned. There were 150 renewal applications that would have met the criteria for an abandoned application in 2016. If all abandoned applications are re-submitted with the \$100 application fee, then the bill would generate an

additional \$15,000 in application fee revenue for the Fund in FY 2018. However, the OSBC estimates there would be significantly fewer applications that would be classified as abandoned under the requirements of the bill, which would significantly reduce the amount of estimated revenue. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.

SB 21—Kansas Money Transmitter Act Amendments

SB 21 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate Committee and House Committee hearings, a representative of the OSBC testified in favor of the bill, stating the bill would provide clarification and aid the OSBC in appropriately enforcing money transmitter licensure. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to clarify further the definition of "service provider."

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates the costs associated with implementing SB 21 would be negligible and could be absorbed within the OSBC's existing budget. The OSBC indicates enactment of the bill has the potential to increase revenues to the Fund from late fees and from additional application fees from applicants whose original application has been abandoned; however, the additional revenues are estimated to be negligible.

SB 67—Banking Code Amendments, Allowing Banks to Purchase Certain Tax Credits

SB 67 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, a KBA representative testified in favor of the bill,

stating current Kansas tax law allows a historic preservation tax credit to be used against the privilege tax liability imposed upon any national banking association, state bank, trust company, or savings and loan association; however, the Kansas Banking Code does not recognize bank participation in the purchase of historic tax credits in Kansas as a permissible activity. Thus, the representative noted, the banking code and tax code are out of sync. The representative also stated federally-chartered banks and savings and loan associations currently have the ability to purchase these credits. Written-only proponent testimony was provided by a representative of the Community Bankers Association of Kansas. No neutral or opponent testimony was provided. In the House Committee hearing, a representative of the KBA appeared in support of the bill.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue (KDOR) estimates enactment of SB 67 would have the potential to reduce privilege tax revenues by allowing state-chartered banks to purchase and hold the historic preservation tax credit; however, the reduction in privilege tax revenues are estimated to be negligible. KDOR indicates all banks, savings and loans, and trust companies are estimated to pay privilege taxes totaling \$39.0 million in FY 2018 and \$40.0 million in FY 2019 and only a small fraction would be offset by state-chartered banks purchasing the historic preservation tax credit. The bill would not affect the overall amount of tax credits that can be claimed each year, but could change the way these tax credits could be claimed by individual, corporate, and privilege taxpayers.

The OSBC indicates the bill would have no fiscal effect on OSBC operations. The Kansas Historical Society currently administers the historic preservation tax credit; however, the changes proposed in the bill would have no fiscal effect on the administration of this tax credit. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.

***SB 87—Kansas Credit Services Organization Act
Amendments***

SB 87 was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate Committee and House Committee hearings, representatives of Consumer Credit Counseling Service, Inc., Housing and Credit Counseling, Inc., and the OSBC testified in favor of the bill. The proponents generally stated the bill would provide modernization of the KCSOA, and these changes would help CSOs provide additional services, strengthen safeguards for consumers, and update the regulatory process. The OSBC representative noted the definitions of “related interest” and “registrant” should be deleted from the bill. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to delete the definitions of “related interest” and “registrant” from the KCSOA.

According to the fiscal note prepared by the Division of the Budget on SB 87, as introduced, OSBC indicates enactment of the bill would have no fiscal effect on OSBC operations.