

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 129**

As Agreed to April 4, 2013

Brief*

SB 129 would remove a provision in the mortgage interest rate law that established a floating cap on the interest rate charged for first real estate mortgage loans and contracts for deeds and required computation and publication of the rate on a monthly basis. With the elimination of the specified interest rate cap, parties would be subject to provisions in current law which provide a rate that could not exceed 15.0 percent per annum, unless otherwise specifically authorized by law.

Under current law, this maximum annual interest rate is an established rate of no more than 1.5 percentage points above a specified monthly floating cap by the Federal Home Loan Mortgage Corporation (Freddie Mac). The specified monthly floating index rate in law is the yield of 30-year fixed-rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the Federal Home Loan Mortgage Corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month. The interest rate is required to be computed for each calendar month, and the Secretary of State is required to publish notice of this maximum interest rate no later than the second issue of the *Kansas Register* each month.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Conference Committee Action

The Conference Committee agreed to delete the content of the bill, relating to certain fees and the Bank Commissioner, and insert the contents of SB 52, as amended by the Conference Committee. The Conference Committee amendments deleted provisions relating to the floating interest rate cap and its computation and publication for first real estate mortgage loans and deeds. Additionally, technical amendments were made.

SB 52, as recommended by the Senate Financial Institutions and Insurance Committee, would have increased the maximum annual interest rate from a rate of no more than 1.5 percentage points to no more than 3.5 percentage points above the monthly cap. The bill was passed by the Legislature and, as of April 4, awaited action by the Governor.

The Conference Committee action repeals the existing statute (KSA 16-207), applying to the mortgage interest rate, and the same statute, as amended by 2013 SB 52, which awaits action by the Governor.

Background

Pursuant to the provisions of KSA 16-207, the usury rate is published on a monthly basis by the Secretary of State. According to information published on the Secretary of State's website, the maximum interest rate for the period of April 1, 2013, through April 30, 2013, is unavailable from the Federal Home Loan Mortgage Corporation (Freddie Mac). The rate published for March 1 through March 31, 2013, was 4.59 percent. A Kansas Bankers Association representative appearing before the Conference Committee indicated Freddie Mac no longer publishes a monthly interest rate and provisions in Kansas law could be updated to reflect this change.

SB 129 was introduced at the request of the Office of the State Bank Commissioner (OSBC) whose representative

indicated the bill was requested following a recent review of the OSBC's rules and regulations for certain fees (KAR 17-22-1). The OSBC recently proposed amendments to its regulation and the Attorney General's Office would not approve the amendments because, in certain instances, there was no correlating statutory authority authorizing the OSBC to charge the application and hearing fees. An OSBC representative indicated the agency requested the statutory changes to specifically authorize fees which are currently charged and have been charged for many years. There were no other proponents and no opponents present at the Senate Committee hearing.

The Senate Committee on Financial Institutions and Insurance amendment inserts parallel language for banks applying for relocation of an existing branch bank or a new branch bank who do not meet the definition of "eligible bank" (language parallels new public hearing provisions for those banks deemed eligible banks). The amendment was requested by the OSBC.

The House Committee on Financial Institutions amended the bill to remove the stipulation that any unused balance of fees paid to the Commissioner and remitted to the State Treasurer for deposit in separate accounts would be transferred to the Bank Commissioner Fee Fund (KSA 9-2111). The House Committee added new language establishing application types and associated statutory fees to be paid to the Commissioner. The amounts listed in the bill are the actual fee amounts that could be charged if the bill is signed into law. Further, the House Committee added rules and regulations authority for the Commissioner to change the fees, as long as the fees listed in the bill are not increased more than 150 percent. The House Committee also provided further rules and regulations authorization to administer the fees, as well as authorizing the Commissioner to charge additional costs for on-site examinations.

The fiscal note prepared by the Division of the Budget on the original bill states the OSBC indicates enactment of

the bill would have no fiscal effect on its operations. The agency indicates it currently charges the fees proposed in the bill to offset the actual costs of providing certain services under the authority of its current rules and regulations. The bill would place this authority in statute.

SB 52 was introduced at the request of the Kansas Bankers Association, whose representative indicated interest rates have fallen to historical record lows and have hovered just above 4.0 percent for the past 12 months. The representative cited an issue of concern about the ability of banks contracted to sell loans to buyers in the secondary market being unable to fulfill the terms of their contracts: In October 2012, the Freddie Mac rate was published initially at 1.9 percent, making the maximum rate for the month 3.4 percent. With contracts locked in at an interest rate around 4.0 percent, banks faced a choice to either violate the Kansas usury law or violate the agreement with a secondary market purchaser (the rate was later adjusted above 4.0 percent). The bill would address this concern about uncertainty in the secondary market.

There were no opponents at the Senate Committee hearing.

The Senate Committee recommended the bill be placed on the consent calendar.

The fiscal note prepared by the Division of the Budget states the Office of the State Bank Commissioner indicates the bill would have no fiscal effect on its operations. The bill has the potential to increase loan costs for consumers by allowing lenders to charge higher interest rates for certain real estate mortgages and contracts for deeds. However, the fiscal note concludes, the additional costs cannot be estimated.

monthly mortgage rate interest cap; Freddie Mac

ccrb_sb129_01_usury.odt