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## 2015 Banking Code Legislation – Overview and Highlights

This comprehensive proposed recodification of the Kansas banking code has been in progress for numerous years dating back to at least the year 2000. One of the more recent and extensive efforts resulted in a nearly completed draft in 2008. After lying dormant for a number of years, the project was revived by the Office of the State Bank Commissioner (OSBC) in October of 2012.

Starting in January 2013, a small committee comprising the deputy banking commissioner, OSBC attorneys and the director of corporate activities has met approximately once every week. Committee members thoroughly scrutinized each statute for clarity, antiquity, changes to both federal and state laws affecting banking issues, and industry practices. Where applicable, the committee has reviewed and identified laws for possible repeal as unnecessary, outdated, or in some instances duplicative. As certain sections were completed, they were forwarded to the Kansas Bankers Association and Community Bankers Association for their vetting and input/feedback.

To facilitate passage through the legislature, the goal of the project has always been to update, clarify, and thin down or eliminate antiquated language and unnecessary statutory provisions. Keen attention has been paid to ensure that nothing is being taken away or detracts from Kansas bankers' ability to serve the financial needs of Kansas residents and businesses. In many instances, items that have been addressed over the years through special orders, where appropriate, are being codified for the first time into statute.

There are 209 statutes and nearly all are being amended in some way.

75% of the banking code has not been amended in any way since 1999. (154 statutes)

43% has not been amended since 1989. (90 statutes)

20% has not been amended since 1975. (43 statutes)

13% has not been amended since 1947. (27 statutes)

A number of statutes had predecessors in the previous version of the banking code, dating to before 1947.

(These are approximations but very close to actual.)

Roughly 44 statutes are suggested to be repealed either as unnecessary or because it makes more sense to combine or move them to other areas of the code to make the code more user-friendly.

About 12 statutes will be added either by way of moving other statutes to new locations or the codification of special orders.

In the aggregate, the banking code will shrink by about 32 statutes.

Currently there are 30 special orders. All but five are being codified into statute or revoked as no longer relevant.

Highlights:

1. Start-up capital increase.
  - a. Increasing from \$250,000 or 8% of its estimated deposits five years after its organization to \$3,000,000 or 8% of its estimated deposits five years after its organization for banks. From \$250,000 to \$500,000 for trust companies.
  - b. For trust companies, Kansas has one of the lowest capital requirements of all states. The increase to \$500,000 is still very low compared to other states.
2. Application process for new banks.
  - a. The proposed legislation streamlines the statutes by combining and moving the new charter application process found in K.S.A. 9-1801 to 9-1803 and places it with the new charter organization requirements found in K.S.A. 9-801 to 9-804.
3. Same process for eligible and ineligible banks for application processes.
  - a. The proposed statute will no longer distinguish between eligible and ineligible banks for new branch, branch relocation, and main office relocation applications.
  - b. Because it has been time-consuming, inefficient and potentially detrimental for banks to have to wait until the banking board convenes to act on applications under 3.a. above, such applications will now all be acted on by the Commissioner. (See proposed K.S.A. 9-1111.)
4. Creation of a complete, voluntary liquidation process.
  - a. A review of the existing law indicates the current statute is contradictory and incredibly outdated.
  - b. The amended statute will allow a bank to liquidate under the approval and supervision of the commissioner.
5. Codification of approximately 25 special orders and a few regulatory mailings.
  - a. This covers multiple subject matters addressed by the Commissioner pursuant to K.S.A. 9-1715 over several years.
  - b. Codification will clarify statutory allowances and interpretations.
6. Clarification on when holding periods for other real estate (ORE) begin.
  - a. The agency receives numerous questions and inquiries regarding this subject matter.
  - b. Agency guidance, issued to banks, outlined agency regulatory practice relating to ORE and will now be codified.

7. Addition of Memorandum of Understanding (MOU) authority.
  - a. It has been the practice of the state bank commissioner to join in MOUs with the FDIC and/or the Federal Reserve Bank when a bank's condition becomes a safety and soundness concern.
  - b. The MOUs are informal and confidential understandings between a bank and the regulators, to correct certain activity. The seriousness of the concerns does not rise to the level requiring a cease and desist order.
  - c. This authority protects banks and consumers from having publicly available documentation of a bank's condition absent a serious concern about the safety and soundness of the bank.
8. Clarification/combination of merger process.
  - a. Applications for bank and trust company mergers will now closely mirror the process for change of control/acquisition applications.
  - b. Previously the statute was vague and resulted in the agency receiving numbers of questions and inquiries regarding application filing requirements and publication notices.