



Deryl Schuster, Bank Commissioner

Office of the State Bank Commissioner

Sam Brownback, Governor

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Mr. Chairman and Members of the Committee:

My name is Dustin Kirk, and I am a Staff Attorney with the Office of the State Bank Commissioner. I am here today to speak in support of Senate Bill 240.

The mission of the Office of the State Bank Commissioner (OSBC) is to ensure the integrity of regulated providers of financial services through responsible and proactive oversight, while protecting and educating consumers. In order to continue that responsible and proactive oversight, it is necessary to review and, when necessary, amend the laws under which the authority for that oversight is derived. While certain statutes have been reviewed and updated periodically, the last large overhaul of the state banking code was in 1999 while the last wholesale recodification was done in 1975.

This bill is the culmination of a decade-long deliberative process reflecting a review of the existing statutes in the banking code. Starting in October of 2012, the OSBC undertook the current effort. Through partnership between the regulators and industry leaders, the OSBC, the Kansas Bankers Association and the Community Bankers Association, reviewed all 209 statutes of the banking code. The result is SB 240.

The over-arching goal of the project has 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 two documents attached to this written testimony. The first is a table summary of SB 240. The section number, statute that is being amended, and the topic the statute addresses is in the left column. The right column contains a brief note on what the amendment seeks to accomplish. The table is organized in order of section number. The first two pages contain the new sections that will be added to the banking code. This part is slightly different than the remainder of the summary because the OSBC feels it is pertinent to note, by way of the middle column, where those sections are derived. It was indicated to the OSBC that the revisor will discuss the new sections with you today, but the following should be highlighted for additional discussion:

- New section 3 contains the authority for the Commissioner to enter into informal, confidential memorandums with state-chartered banks. This authority is new to statute to provide the weighted authority of the legislature for the Commissioner to act in this manner. The reality of the matter is that the Commissioner takes part in informal memoranda currently. The object of such memoranda is to put a bank on notice of a potentially concerning matter, although the whole of the bank's condition has not yet deteriorated to necessitate a public cease and desist. Keeping these memoranda confidential is akin to the confidentiality of exam reports. It is important that relatively small matters such as these remain confidential to prevent further unnecessary harm to the bank or its reputation, when the matter may be easily resolved.
- New section 4 adds new authority to statute for the Commissioner to enter into consent orders. This too is a current practice of the Commissioner and the reason for its inclusion into statute is to remove any doubt as to the authority to take such action. Current law deems a failure to exercise the right to

an administrative hearing on a cease and desist order, a concession to the order and all of the facts and findings therein. The authority to enter into a consent order by which both parties can agree to the issuance of the order, rather than conceding, may seem more palpable to the potentially aggrieved party.

- New section 12 adds a fee structure to statute, housing all of the fees the commissioner may charge for the investigation and examination of applications filed pursuant to various statutes throughout the code. These fees are currently in regulation. The language of this section was derived from a 2013 senate bill, SB 129, which did not pass the legislature. There is some discretion built into the proposed statute by allowing the Commissioner to raise the statutory fees up to 150% by rule and regulation or waive the fee entirely. This provision was part of SB 129 also. The proposed statutory fees reflect those currently found in regulation with the addition of three new fees for conversion of a charter, a request for trust authority and an application for a trust facility from an out-of-state entity.

A number of the major changes to existing statutes were previously discussed with this committee. A few not noted elsewhere in this testimony and attachments are as follows:

- New sections 5-7 create a complete, voluntary liquidation process for a bank, recodifying K.S.A. 9-1108-1110. A review of the existing law indicates the current statutes are contradictory and incredibly outdated. The amended statutes will allow a bank to liquidate under the approval and supervision of the commissioner.
- Section 23, K.S.A. 9-801 proposes to streamline the application process for new banks by combining and moving the new charter application process found in K.S.A. 9-1801 to 9-1803 and placing it with the new charter organization requirements found in K.S.A. 9-801.
- Section 32, K.S.A. 9-901a will increase the amount of capital required for a new bank 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. Trust company start-up capital will increase from \$250,000 to \$500,000.
- Section 46, K.S.A. 9-1102 clarifies when holding periods for other real estate (ORE) begin as well as adding additional structures under which real estate acquired by a bank may be managed. The agency receives numerous questions and inquiries regarding this subject matter. Agency guidance, issued to banks, previously outlined agency regulatory practice relating to ORE and will now be codified.
- Section 49, K.S.A. 2014 Supp. 9-1111 will remove the distinction between eligible and ineligible banks for new branch and branch relocation applications. It has been time-consuming, inefficient and potentially detrimental for banks to have to wait until the banking board convenes to act on applications; such applications will now all be acted on by the Commissioner. (The same is being proposed for main office relocation under New Sec. 9.)
- Sections 109-113, K.S.A. 9-1719, 1720, 1724, and K.S.A. 2014 Supp. 9-1721, 1722 are clarifying and combining the change of control and merger application procedures. The procedure and criteria will be the same for anyone wanting to take control or merge with a state-chartered bank.

The summary of the amendments will contain various simple phrases such as, "minimal language clean-up," "minimal language and reference clean-up," and "re-written to clean up language and formatting." These phrases signify to the reader that the amendments are clerical or grammatical in nature only. When there is substantive change, the note will state what that change is in a summarized fashion.

The second document is a memorandum discussing all the repealed statutes and the fate of those provisions. Additionally, the second document contains a list of the special orders and their topics that are being codified into statute for the first time.

It is our intention that these documents will be an aid in navigating such a large bill. Because not everything can be put into testimony, for fear that the testimony will become as lengthy as the legislation, it is also intended that the attachments are mere supplements to SB 240 and can in no way incorporate or denote every change.

Mr. Chairman, thank you for allowing me to highlight a few of the amendments and provide guidance on Senate Bill 240. I would ask for the committee's favorable consideration and would be happy to answer any questions.