

CHAPTER 81

Substitute for SENATE BILL No. 535

AN ACT concerning credit unions; pertaining to field of membership; pertaining to mergers; pertaining to branches; amending K.S.A. 17-2205, 17-2206 and 17-2228 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) After first applying for and obtaining the approval of the administrator, a credit union incorporated under the laws of this state, may establish and operate one or more branches or relocate an existing branch, in accordance with its stated field of membership as approved by the administrator. The application shall include proof of publication of notice that the applicant credit union intends to file or has filed an application to establish a branch or relocate an existing branch. The notice shall be published in a newspaper of general circulation in the county where the applicant credit union proposes to locate the branch. The notice shall be in the form prescribed by the administrator and at a minimum shall contain the name and address of the applicant credit union and the location of the proposed branch. The notice shall be published on the same day for two consecutive weeks.

(b) (1) If the credit union has a current CAMEL rating of 3, 4 or 5, or the recognized regulatory equivalent thereof as defined in rules and regulations promulgated by the administrator, the application shall also contain a solicitation for written comments and provide for a comment period of not less than 10 days after the date of the second publication. Upon receipt of the application and following expiration of the comment period, the administrator may hold a hearing in the county in which the applicant credit union seeks to operate the branch. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant credit union proposes to locate the branch, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the administrator. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the administrator, or the administrator's designee, in support of or in opposition to the branch. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the administrator.

(2) If the administrator determines a public hearing is not warranted, the administrator shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the administrator shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the administrator's investigation. The period for consideration of the application may be extended if the administrator determines the application presents a significant supervisory concern. If the administrator finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch;

(B) the proposed branch is in accordance with the applicant's field of membership approved by the administrator as set forth in K.S.A. 17-2205 and amendments thereto; and

(C) the applicant credit union's financial condition is sound, including an analysis of the loan portfolio to ensure that the applicant credit union is not exceeding the limitation on member business loans provided in 12 U.S.C. Section 1757a, and amendments thereto, the new branch or relocation shall be granted, otherwise, it shall be denied.

(3) Within 15 days after any final action of the administrator approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the administrator. Upon receipt of a timely request, the administrator may conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the administrator is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(c) For purposes of this section:

(1) "Administrator" shall have the meaning ascribed to it in K.S.A. 17-2233 and amendments thereto.

(2) "Branch" means any office, agency or other place of business lo-

cated within this state, other than the place of business specified in the credit union's certificate of organization, at which deposits are received, checks paid, or money lent.

(d) The administrator may adopt rules and regulations necessary to implement this section.

Sec. 2. K.S.A. 17-2205 is hereby amended to read as follows: 17-2205. (a) The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same, and have complied with such other requirements as the articles of incorporation may contain. ~~Credit union organizations shall be limited to groups (of both large and small membership) having a common bond of occupation or association or to groups residing within a well defined neighborhood, community or rural district.~~

(b) (1) Credit union organizations shall be limited to:

(A) A group having a single common bond of occupation or association;

(B) a group having multiple common bonds of occupation or association or any combination thereof. No such group shall have a membership of more than 3,000 except as permitted in subsections (c) or (d); or

(C) persons residing, working or worshiping in or organizations located within a geographic area.

(2) A common bond of occupation may include employees of the same employer, workers under contract with the same employer, businesses paid by the same employer on a continuing basis or employees in the same trade, industry or profession.

(3) A common bond of association may include members and employees of a recognized association as defined in such association's charter, bylaws or other equivalent document.

(c) A credit union which chooses to be limited as provided in subparagraph (C) of paragraph (1) of subsection (b) may include one or more common bonds of occupation or one or more common bonds of association or any combination thereof with no limitation on the number of members, if the employer or association is located in the geographic area of the credit union.

(d) A group formed with multiple common bonds of occupation or association may exceed 3,000 members if the administrator determines in writing that such group could not feasibly or reasonably establish a new single common bond credit union because the group:

(1) Lacks sufficient volunteer and other resources to support the efficient and effective operation of a credit union;

(2) does not meet the criteria established by the administrator indicating a likelihood of success in establishing and managing a new credit union, including demographic characteristics such as geographical location of members, diversity of ages and income levels, and other factors that may affect the financial viability and stability of a credit union; or

(3) would be unlikely to be able to operate in a safe and sound manner.

(e) (1) A geographic area may include:

(A) A single political jurisdiction;

(B) multiple contiguous political jurisdictions if the aggregate total of the population of the geographic area does not exceed 500,000, except as provided in subparagraph (C) or in subsections (i), (j), (k) and (l); or

(C) if the headquarters of the credit union is located in a MSA, the geographic area may include one or more political jurisdictions which share a common border to the MSA if the aggregate total of the population of the geographic area does not exceed 1,000,000. The maximum population available for any credit union whose headquarters is located within a MSA shall be adjusted by the administrator based upon the population data for the largest MSA in the state of Kansas, or any portion thereof located within the state of Kansas. The maximum population available for any credit union whose headquarters is located within a MSA shall be determined by multiplying the population of the largest MSA in the state of Kansas, or that portion of such MSA located within the state of Kansas if the boundaries of such MSA extend outside the state of Kansas, as determined by the most recent population data, by the fraction having a numerator of 1,000,000 and a denominator of 750,000 for the purposes of this section, the administrator shall use population data based upon the adjusted federal census information presented to the legislature by the

secretary of state pursuant to K.S.A. 11-304 and amendments thereto.

(2) Except as provided in subsections (i), (j), (k) and (l), from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas.

(f) (1) Except as provided in subsections (i), (j), (k) and (l), from and after July 1, 2008, no credit union shall change or alter its field of membership except as provided in this section. Before a credit union can alter or change its field of membership, such credit union shall file, or cause to be filed, with the administrator, an application for amendment to its field of membership. The application shall include:

(A) Documentation showing that the proposed area or groups to be served meets the statutory requirements for field of membership set forth in this statute;

(B) pro forma financial statements for the first two years after the proposed alteration of or change in field of membership, including any assumption regarding growth in membership, shares, loans and assets;

(C) a marketing plan addressing how the proposed field of membership will be served;

(D) the financial services to be provided to the credit union's members;

(E) a local map showing the location of both current and proposed headquarters and branches; and

(F) the anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

(2) (A) The application shall also include a proof of publication of the notice that the affected credit union intends to file or has filed an application to alter or change its field of membership. Such notice shall be in the form prescribed by the administrator and shall at a minimum contain the name and address of the applicant credit union and a description of the proposed alteration of or change in the field of membership.

(B) The notice shall be published for two consecutive weeks in the Kansas register. The required publications shall occur within 60 days of and prior to the effective date of the proposed change. The applicant shall provide proof of publication to the administrator.

(g) For the purposes of this section:

(1) "MSA" means a metropolitan statistical area as defined by the United States department of commerce which has more than one county located in Kansas. If the boundaries of such MSA extend outside the state of Kansas only that portion of such MSA located within the state of Kansas shall be considered for the purposes of this section.

(2) "Political jurisdiction" means a city, county, township or clearly identifiable neighborhood.

(3) "Population data" means official state population figures for the state of Kansas, or any portion thereof, which are identical to the decennial census data from the actual enumeration conducted by the United States bureau of the census and used for the apportionment of the United States house of representatives in accordance with K.S.A. 11-304 and amendments thereto.

(h) No increase in the population reflected by the population data shall require a modification to a field of membership as in existence on June 30, 2008.

(i) Notwithstanding any other provisions of this section, any person, including any member of such person's immediate family, or organization that is a member of any credit union which was in existence on June 30, 2008, may continue to be a member of such credit union after such date. For the purposes of this subsection, if the term "member" refers to an individual, the term member may include any other person who is a member of such individual's immediate family as determined by the bylaws of the credit union on the effective date of this act. If such credit union's bylaws do not define the term "immediate family", the term "immediate family" shall mean spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse.

(j) (1) Notwithstanding any other provisions of this section:

(A) Any branch of a credit union that is in existence as of February 1, 2008, may continue to operate in the county where it is located on and after June 30, 2008.

(B) Any credit union which has taken an overt step toward the construction of a new building, facility or branch on or before February 1, 2008, may continue to construct and operate the new building, facility or

branch in the city in which such new building, facility or branch is located even if the construction is not completed on or before June 30, 2008.

(2) For the purposes of this subsection, the term "overt act" includes the:

(A) Purchase of or entering into a contract for the purchase of any necessary tract of land for the location of such new building, facility or branch of an existing credit union.

(B) Acquisition or lease of a building for the purpose of housing a new facility or branch of an existing credit union.

(C) Adoption of architectural drawings for the construction of a new building, facility or branch of an existing credit union.

(D) Adoption of architectural drawings for the renovation of an existing building for use as a facility or branch of an existing credit union.

(k) Notwithstanding any other provisions of this section, a member of any occupation or association group whose members constituted a portion of the membership of any credit union as of February 1, 2008, shall continue to be eligible to become a member of that credit union, by virtue of membership in that group on and after June 30, 2008. For purposes of this subsection, a patron of an organization is eligible for membership if such patron is an individual who uses the products and services of the organization which is included in the field of membership of the credit union at the time the patron applies for membership in the credit union.

(l) Notwithstanding any other provisions of this section, any credit union:

(1) Which has been granted a field of membership on or before February 1, 2008, which includes the entire state of Kansas or its residents shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population not to exceed 1,000,000. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total. Any credit union with its headquarters located in a county that is not part of a MSA shall not include more than one MSA in its entirety in its adopted field of membership.

(2) With its headquarters located within a MSA as of February 1, 2008, may continue to include multiple contiguous political jurisdictions that were included in its field of membership as of February 1, 2008, if the aggregate total population of such multiple contiguous political jurisdictions does not exceed 1,000,000. If the field of membership of any credit union involves multiple contiguous political jurisdictions that have an aggregate total population that exceeds 1,000,000 as of February 1, 2008, then such credit union shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population which does not exceed 1,000,000. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total.

(3) With headquarters located in a county that is not part of a MSA may continue to include multiple contiguous political jurisdictions that were included in its field of membership as of February 1, 2008, if the aggregate total population of such multiple contiguous political jurisdictions does not exceed 1,000,000 population total. If the field of membership of any credit union involves multiple contiguous political jurisdictions that have an aggregate total population that exceeds 1,000,000 as of February 1, 2008, then such credit union shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population which does not exceed 1,000,000 population total. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total. The adopted field of membership of such credit union shall not include more than one MSA in its entirety.

Sec. 3. K.S.A. 17-2206 is hereby amended to read as follows: 17-2206. (a) Credit unions shall be subject to the exclusive supervision of the administrator and shall make and keep current such books and records, prepare reports and establish plans and programs concerning the safety and soundness of the credit union as may be required by rules and regulations adopted by the administrator and shall make a report of condition to the administrator at least semiannually, on blank forms to be

supplied by the administrator, notice of which reports shall be sent out by the administrator. Returns shall be verified under oath of the president or chairperson of the board, whichever has been elected by the board of directors pursuant to K.S.A. 17-2209, and amendments thereto, and treasurer, and additional reports may be required by the administrator. Copies of a current balance sheet shall be furnished without charge by the administrator to any person upon request. Any credit union which neglects to make the above reports shall forfeit to the treasurer of the state up to \$50 for each day of such neglect at the discretion of the administrator.

(b) Each credit union shall be examined at least once every 18 months by the administrator or the administrator's duly authorized deputy or agent. In lieu of any particular examination, the administrator may accept an examination report made by or under the authority of the national credit union administration or its successor or successors, by any such other appropriate federal agency or by an independent auditor or certified public accountant licensed to do business in the state of Kansas if such audit and report meet the standards which the administrator may by regulation promulgate. The administrator may order other examinations, and the administrator's agents shall at all times be given free access to all books, papers, securities and other sources of information in respect to the credit union. The administrator shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with any subject relating to a duty imposed upon or a power vested in the administrator. If a credit union neglects to make the required reports or to pay the charges required, including charges for delay in filing reports, for 15 days, the administrator shall notify the credit union of the administrator's intention to revoke the certificate of approval. If the neglect or failure continues for another 15 days, the administrator may revoke the certificate of approval and shall cause one of the administrator's agents to take possession of the business of such credit union and retain possession until such time as the administrator may permit such credit union to resume business or its affairs are finally liquidated.

(c) The administrator may issue cease and desist orders or orders for corrective action or both, made over the administrator's official signature, having determined that a credit union is engaged, has engaged, or is about to engage, in an unsafe or unsound practice, or is violating, has violated, or is about to violate, any law, rules and regulations or any condition imposed in writing by the administrator or any written agreement made with the administrator.

(d) If the administrator determines that a credit union is insolvent, is in a deteriorating condition, as defined in rules and regulations promulgated by the administrator, or, within a reasonable time, has failed to comply with any order mailed to the last address filed by the credit union with the administrator, the administrator, as conservator or liquidating agent, pursuant to any order shall immediately, or within a reasonable time thereafter, take possession of or appoint an agent to take possession of the business and property of the credit union and retain possession, as conservator or as liquidating agent, until such time as the administrator may permit it to resume business or its affairs are finally liquidated.

(e) *The administrator may approve an emergency merger in accordance with K.S.A. 17-2228, and amendments thereto, without regard to field of membership or other legal restraints. The credit union to be merged shall have a current CAMEL rating of 4 or 5, or the recognized regulatory equivalent thereof as defined in rules and regulations promulgated by the administrator, and be determined to be undercapitalized in accordance with regulatory standards as determined by the administrator by rules and regulations. The field of membership of the merged credit union will be retained by the continuing credit union resulting from the merger.*

(f) Each credit union shall pay to the administrator a fee for examination, established in accordance with this subsection. Prior to June 1 of each year, the administrator, after advising the credit union council, shall establish such annual fees as the administrator determines to be sufficient to meet the budget requirements of the department of credit unions for the fiscal year beginning July 1. Such fees shall be due and payable 30 days after receipt of billing from the department of credit unions.

~~(f)~~ (g) For a corporate credit union, the administrator may accept an audit report by a certified public accountant in lieu of the credit union departmental examination of such credit union. If the administrator accepts a certified public accountant audit in lieu of the administrator's examination of such corporate credit union, the administrator may assess such corporate credit union a fee established in accordance with subsection ~~(e)~~ (f).

~~(g)~~ (h) All administrative proceedings instituted or conducted by the administrator pursuant to this act shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto.

~~(h)~~ (i) The administrator, as conservator or liquidating agent:

(1) By operation of law, shall succeed to all rights, titles, powers and privileges of the credit union, and of any member, account holder, officer or director of such credit union with respect to the credit union and the assets of the credit union;

(2) shall take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors and the officers of the credit union and shall be authorized to conduct all business of the credit union;

(3) may collect all obligations and money due the credit union;

(4) may perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent;

(5) shall preserve and conserve the assets and property of such credit union;

(6) may fix a reasonable amount for compensation of the conservator or liquidating agent as an expense of operation or liquidation of the credit union;

(7) may take such actions as may be necessary to put the credit union in a sound and solvent condition;

(8) may take such action as may be appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union; and

(9) as liquidating agent, place the credit union in liquidation and proceed to realize upon the assets of the credit union and liquidate such credit union in accordance with the provisions of K.S.A. 17-2230, and amendments thereto.

~~(i)~~ (j) A credit union approved to do business in this state under K.S.A. 17-2223a, and amendments thereto, shall pay to the administrator the same fees for examination that a state-chartered credit union is required to pay under the provisions of subsection ~~(e)~~ (f). Such fees shall be paid in accordance with the provisions of subsection ~~(e)~~ (f).

Sec. 4. K.S.A. 17-2228 is hereby amended to read as follows: 17-2228. Any credit union, with the approval of the administrator, may merge with another credit union under the charter of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the members of each such credit union organized under the provisions of this act, either by the affirmative vote of a majority of those members present at a meeting of its members duly called for such purpose or by the affirmative vote in writing of a majority of its members who participate in the vote on the merger plan without a meeting. After such agreement by the directors and approval of the members of each credit union organized under the provisions of this act, the president or chairperson of the board and secretary of each credit union organized under the provisions of this act, shall execute in triplicate, a certificate of merger, which shall set forth all of the following:

(a) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

Such certificates, in triplicate, a copy of the plan of merger agreed upon, and any necessary approvals or consents for a merging credit union organized under the provisions of any other jurisdiction shall be for-

warded to the administrator ~~and~~. Upon receipt of these documents, the administrator shall determine whether the merger meets the statutory requirements for field of membership set forth in K.S.A. 17-2205, and amendments thereto. If the merger is approved, a copy of the certificate, certified by the administrator, shall be returned to the merging credit unions within 30 days. The date of certification of the merger by the administrator shall constitute the date of approval. Upon any such merger so effected, all property, property rights and interest of the merged credit union shall vest in the continuing credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the continuing credit union under whose charter the merger was effected.

This section shall be construed, whenever possible, to permit a credit union chartered under any other act to merge with one chartered under this act or to permit one chartered under this act to merge with one chartered under any other act. The charter of the terminating credit union shall upon merger be canceled and voided by operation of law.

Sec. 5. K.S.A. 17-2205, 17-2206 and 17-2228 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 11, 2008.
