

REPORTS OF STANDING COMMITTEES

MADAM PRESIDENT:

The Committee on **Financial Institutions and Insurance** recommends **HB 2216**, as amended by House Committee, be amended on page 8, following line 10, by inserting:

"Sec. 4. K.S.A. 2014 Supp. 9-511 is hereby amended to read as follows: 9-511. The following persons shall be exempt from the provisions of this act:

(a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions organized under the laws of and subject to the supervision of this state, another state or the United States;

(2) service providers that: (A) By written agreement with the exempt entities listed in (a)(1), provide for receipt and delivery of funds, network access, processing, clearance or settlement services in support of money transmission activities; and (B) allow the state or federal regulators with regulatory jurisdiction over the exempt entity to examine and inspect the applicable records, books and transactions relating to the service provider;

(3) the government of the United States and its agencies, including agents of the government and its agencies; or

~~(3)~~ (4) the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.

(b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.";

On page 9, following line 37, by inserting:

"Sec. 7. K.S.A. 2014 Supp. 9-2201 is hereby amended to read as follows: 9-2201. As used in this act:

(a) "Bona fide office" means an applicant's or licensee's principal place of business ~~which meets all of the following requirements~~ with an office that:

- (1) ~~The office~~ Is located in this state;
- (2) ~~the office~~ is not located in a personal residence;
- (3) ~~the office~~ has regular hours of operation;
- (4) ~~the office~~ is accessible to the public;
- (5) ~~the office~~ is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;
- (6) ~~the office~~ is separate from any office of another registrant; and
- (7) is accessible to all of the licensee's books, records and documents ~~are accessible through that office.~~

(b) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted; and which is licensed as required by this act.

(c) "Commissioner" means the ~~Kansas~~ state bank commissioner.

(d) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

(e) "Licensee" means a person who is licensed by the commissioner as a mortgage company.

(f) "Loan originator" means an individual:

- (1) Who engages in mortgage business on behalf of a single mortgage company;
- (2) whose conduct of mortgage business is the responsibility of the licensee;
- (3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and

(4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms; or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

(g) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

(1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

(h) "Nationwide mortgage licensing system and registry" means 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.

(i) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the

business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, or arranging for others; or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

(j) "Mortgage company" means a person engaged in mortgage business from a principal place of business or branch office, which has been licensed as required by this act.

(k) "Mortgage loan" means a loan or agreement to extend credit made to a natural person which is secured by a first or second mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, except as provided for in K.S.A. 60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in ~~section 103(v) of the truth in lending act~~, 15 U.S.C. § 1602(v) (w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

(l) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

(m) "Primary market" means the market wherein mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other means.

(n) "Principal place of business" means a licensed place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

(o) "Promotional items" means pens, pencils, hats and other such novelty items.

(p) "Registrant" means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

(q) "Unique identifier" means a number or other identifier assigned by protocols established

by the nationwide mortgage licensing system and registry.

Sec. 8. K.S.A. 2014 Supp. 9-1111 is hereby amended to read as follows: 9-1111. The general business of every bank shall be transacted at the place of business specified in ~~its~~ the bank's certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 9-1135, and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to ~~subsection (25) of~~ K.S.A. 9-1101(25), and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive deposits under ~~subsection (28) of~~ K.S.A. 9-1101(28), and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term "branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

(b) establishment of a new branch or relocation of an existing branch for eligible banks:

(1) After first applying for and obtaining the approval of the commissioner, an eligible bank incorporated under the laws of this state, may establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state;

(2) the application shall include the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by ~~it~~ the proposed branch bank, the

personnel and office facilities to be provided at the proposed branch bank and other information the commissioner may require;

(3) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed branch bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that ~~it~~ such bank is a branch bank of the applicant bank;

(4) the application shall include proof of publication of notice that the applicant bank intends to file or has filed an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(5) upon receipt of the application, and following expiration of the comment period, the commissioner may hold a hearing in the county in which the applicant bank seeks to operate the branch bank. 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 bank proposes to locate the branch bank, 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 commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner's designee, in support of or in opposition to the branch bank. Upon completion of a transcript of the testimony given at any such hearing, the

transcript shall be filed in the office of the commissioner;

(6) if the commissioner determines a public hearing is not warranted, the commissioner 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 commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. If the commissioner finds that:

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

(B) the applicant bank's financial history and condition is sound, the new branch or relocation shall be granted, otherwise, ~~it~~ the relocation shall be denied;

(7) within 15 days after any final action of the commissioner 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 state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the Kansas judicial review act;

(c) the establishment of a new branch or relocation of an existing branch for banks which do not meet the definition of "eligible bank" shall require that:

(1) After first applying for and obtaining the approval of the state banking board, a bank incorporated under the laws of this state, which does not meet the definition of "eligible bank," may establish and operate one or more branch banks, or relocate an existing branch bank, anywhere within this state;

(2) an application under paragraph (1) of this subsection, to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

~~(3) the application shall include~~ (A) Estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

~~(4) the application shall include~~ (B) the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank; and

~~(5) the application shall include~~ (C) proof of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

~~(6)~~ (3) upon receipt of an application meeting the ~~above~~ requirements of paragraph (2), and following the expiration of the comment period, within 60 days the state banking board may hold a



hearing in the county in which the applicant bank seeks to establish and operate a branch bank. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 10 days prior to the meeting of the board at which the application will be considered;

~~(7)~~(4) the state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

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

(B) the applicant bank's financial history and condition is sound, the application shall be granted, otherwise; the application shall be denied; and

~~(8)~~(5) any final action of the board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act upon the petition of the applicant or any adversely affected or aggrieved person who provided written comments during the specified comment period;

(d) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(e) branch banks which have been established and are being maintained by a bank at the time of ~~its~~ the branch bank's merger into or consolidation with another bank or at the time ~~its~~ such branch

bank's assets are purchased and ~~its~~ the branch bank's liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

(f) any state bank or national banking association may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share ~~its~~ the remote service unit's use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with ~~its~~ the remote service unit's development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and ~~their~~ the bank's customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(h) for purposes of this section, "remote service unit" means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, ~~whether instantaneously or otherwise,~~ to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank or is activated by a person upon verifiable personal identification. The term shall include "online" computer terminals that may be equipped with a telephone or televideo device that allows contact with bank personnel and "offline" automated cash dispensing machines and automated teller machines, ~~but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified.~~ Withdrawals by means of "offline" systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts;

(i) for purposes of this section, "eligible bank" means a state bank that meets the following criteria:

(1) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(2) meets the following three criteria for a well capitalized bank:

(A) Has a total risk based capital ratio of 10% or greater;

(B) has a tier one risk based capital ratio of 6% or greater; and

(C) has a leverage ratio of 5% or greater; and

(3) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement ~~with its~~ the bank's primary federal regulator or the office of the state bank commissioner.";

Also on page 9, in line 38, after "9-510," by inserting "9-511,"; also in line 38, by striking "and"

and inserting a comma; also in line 38, after "9-513b" by inserting ", 9-1111 and 9-2201";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after "banking" by inserting ", financial institutions"; in line 2, after "act" by inserting ", the Kansas mortgage business act, branch banking, remote service units"; also in line 2, after "9510," by inserting "9-511,"; in line 3, by striking the first "and" and inserting a comma; also in line 3, after "9-513b" by inserting ", 9-1111 and 9-2201"; and the bill be passed as amended.

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Chairperson