

Kansas Banking Code—Recodification; Statutory Fees; Inclusion of Special Orders; Reporting; SB 240

SB 240 recodifies the Kansas Banking Code (Chapter 9, *Kansas Statutes Annotated*) and also amends two statutes where provisions of the Banking Code are referenced. As part of the recodification, the bill adds 18 previously issued Special Orders of the Bank Commissioner to existing or new statutes and repeals 56 statutes. Of the 56 statutes repealed, 36 are recodified into existing or new statutes with the bill.

Organization of the Banking Code

The Banking Code is composed of 209 statutes and is organized into the articles referenced below:

- Article 5, Miscellaneous Provisions (includes Kansas Money Transmitter Act and Bank Holding Company law);
- Article 7, Definitions;
- Article 8, Organization;
- Article 9, Capital Stock and Structure;
- Article 11, Powers;
- Article 12, Transactions;
- Article 13, Deposit Insurance and Bonds;
- Article 14, Deposit of Public Moneys;
- Article 15, Safe Deposit Box Rental;
- Article 16, Trust Authority;
- Article 17, Supervision; Commissioner;
- Article 18, Supervision; Board;
- Article 19, Dissolution; Insolvency;
- Article 20, Crimes and Punishments;

- Article 21, Trust Companies; and
- Article 22, Mortgage Business.

The following is a summary of the substantive new or modified provisions that are included in this recodification of the Banking Code.

New Sections Incorporated into the Banking Code

The bill adds law relating to allowing Kansas banks to pledge assets to secure certain deposits in out-of-state branches, informal agreements, consent orders, the crime of obstructing an investigation or examination, establishing fees in statute and providing when the Commissioner can change or waive fees, and allowing banks to pledge to secure funds of federally recognized Indian tribes. More specifically, the bill will:

- Permit state-chartered banks to pledge assets to secure the deposits of public funds in other states where the Kansas bank has branches (codify Special Order 1997-3);
- Authorize the Commissioner to enter into an informal agreement with a bank or trust company for a plan of action to address possible safety or soundness concerns, violations of the law, or any weakness displayed by the bank or trust company when specified circumstances exist;
- Authorize the Commissioner to enter into a consent order at any time with a bank, trust company, any executive officer, director, employee, agent, or other person;
- Create a new crime, providing it will be unlawful for any director, officer, employee, or agent of a bank or trust company to alter, destroy, shred, mutilate, conceal, cover up, or falsify any record with the intent to impede, obstruct, impair, or influence any examination, investigation, or proceeding by the Commissioner. Persons violating this provision will, upon conviction, be guilty of a severity level 8, nonperson felony;
- Establish nonrefundable application fees, including those for bank or trust company charters, change of control, conversion to state charter, and certain fiduciary activities. The Commissioner is allowed to adopt rules and regulations to change the amount of the fees established under the bill to an amount not to exceed 150 percent of any such fee. Additionally, the Commissioner is authorized to waive any fee. The bill provides that applicants may be required to pay additional costs associated with an examination or investigation, should the Commissioner determine an on-site examination is necessary.

The bill permits the Commissioner to adopt rules and regulations relating to the provisions of this section and requires the Commissioner, within the first two weeks of each legislative session, to submit to the House and Senate

appropriations and budget subcommittees, a written summary of any rules and regulations adopted; and

Note: The fees, with the exception of fees established for conversion (currently, no fee charged) and out-of-state trust facilities, have been prescribed by agency rules and regulations (KAR 17-22-1). Fees associated with a new bank branch and relocation of a branch bank or main office are increased from the amount specified in rules and regulations of \$750 to \$1,000.

- Authorize banks to pledge to secure funds of federally recognized Indian tribes (codify Special Order 1999-1).

The bill recodifies and adds law to establish a fee on applicants under Article 8 of the Banking Code (*i.e.*, new charters, conversion, change of name, and relocation) to defray the expenses of the State Banking Board, Commissioner, or other designees in the examination and investigation of an application. (Before, rules and regulations stated applicants must pay additional costs if the Commissioner determines an on-site exam is necessary.) Pursuant to continuing law, the fees will be deposited into a fund for investigations and examination (termed “bank investigation fund” under the bill) and must be used for the payment of examination expenses. Any unused funds must then be transferred to the Bank Commissioner Fee Fund.

The bill recodifies existing statutes, shown as new law and described below, relating to authorization of the Commissioner to temporarily close or relocate banks and trust companies in the event of an emergency, outline voluntary liquidation procedures, prohibit relocation without approval and notification criteria met, and grant authority for the State Banking Board to approve banker’s banks:

- Allows the Commissioner to temporarily close banks and trust companies in an affected area, by proclamation, in the event of an emergency. The bill further outlines the criteria and posting of notice for closure and, if approved, temporary relocation of such institutions;
- Allows a bank, through a specified vote and approval of a liquidation plan, to liquidate by paying in full all of its depositors and creditors. Such bank is required to file its liquidation plan with the Commissioner. The bill grants the Commissioner authority to examine the bank or compel the bank to file reports during the time it is being liquidated. The bill further provides authorization for the Commissioner to appoint a receiver and the procedure associated with the completion of the liquidation of a bank;
- Provides that, upon the approval of the Commissioner, the board of directors of a bank in the process of voluntary liquidation may borrow an amount not to exceed 100 percent of the bank’s total deposit liabilities and may pledge the bank’s assets;
- Permits, as part of the approved liquidation plan, any bank to sell all or any part of the bank’s assets to any other bank, either state or national, and allow the bank to receive in payment cash, shares of stock in the purchasing bank, or both;

- Prohibits a bank or trust company from changing its place of business from one city or town to another without prior approval. The bill specifies notification procedures and authorizes the Commissioner to examine and investigate the application. One factor to be considered in the approval would be that the selected name for the bank is not the name of any other bank doing business in the same city or town and is not used within a 15-mile radius of the proposed location; and
- Grants authority to the State Banking Board to approve the application for the organization of a “banker’s bank.”

Amendments to Existing Statutes

The bill makes a number of technical, clarifying, grammatical, and organizational changes. Following is a summation of substantive amendments to the Banking Code (statutory article specified).

Bank Holding Companies

The bill updates the definition of “bank holding company” and specifies when, in addition to methods in continuing law, a company may become a holding company. Under the bill, any company, with the prior approval of the Commissioner, by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, may become a holding company. Additionally, the bill removes some of the required information and documentation to be filed with an application. The bill also restates an applicant’s rights associated with the denial of an application and also clarifies that a bank holding company applicant may be required to supplement its application with information required for a change of control application. **(Article 5)**

Definitions

The bill updates terms and eliminates terms no longer applicable to the Banking Code. **(Article 7)**

Organization of Banks and Trust Companies

The bill reorganizes a statute pertaining to the organization or incorporation of a bank or trust company by inserting application requirements and provisions allowing further review of an applicant. The bill also inserts provisions regarding lapsed articles of incorporation into another statute pertaining to the lapse, renewal, or extension of a bank’s corporate existence.

The bill also specifies that the full amount of common stock, including the surplus and undivided profits, must be subscribed by a new bank or trust company prior to its filing of the articles of incorporation with the Kansas Secretary of State’s office. The bill amends a provision relating to conversion to a state bank to create a restriction on the naming of the bank. The bill also amends a provision governing conversion of a state bank to a national bank by requiring the state bank to provide a copy of its application to the Office of the Comptroller of the

Currency (OCC, regulates national banks) and written notice of the OCC's approval for the bank to convert. The bill details the process associated with the name change of banks and trust companies, including notification requirements. **(Article 8)**

Capital Stock and Structure—Increase Capital Minimums, Other Amendments

The bill increases the required minimum capital amounts for banks and trust companies organized on or after July 1, 2015. Under the bill, the required minimum capital at the time of the bank organization must be the greater of \$3,000,000 or, as stated in continuing law, an amount equal to 8 percent of the proposed bank's estimated deposits five years after organization (the minimum capital specified had been an amount of at least \$250,000; the increased minimum capital requirement also applies to banks that relocate). For trust companies, the bill increases the minimum capital requirement from \$250,000 to \$500,000. Additionally, all banks are required to maintain a capital ratio of at least 5 percent of equity capital to total assets at all times; this requirement also applies to banks at the time of conversion to a state charter. The bill also specifies when the minimum capital requirements do not apply and allows the Commissioner, in the Commissioner's discretion, to approve a relocation with a smaller equity capital amount under certain circumstances. The bill also grants authority to the Commissioner to require an amount of capital in excess of the required minimum and require banks failing to meet the minimum capital ratio to notify the Commissioner within three days. Upon notice, the Commissioner may require the bank to submit a written plan for restoring capital.

Additionally, the bill updates a provision relating to common and preferred stock of a bank or trust company to remove a limitation on the dollar increment for shares and clarifies the allowed swap of common stock or preferred stock would not be subject to requirements for a capital reduction and the new issue of preferred stock.

The bill also creates a definition for "impairment" and includes reference to the term in the statute pertaining to the impairment of a bank or trust company's capital stock. **(Article 9)**

Powers—Banks

The bill updates the general powers section of the Banking Code to include several previously issued Special Orders. The Special Orders that will be added to the general powers' section are SO 1975-2 (powers to operate postal substation); 1976-1 (power to invest in foreign bonds up to 1 percent of capital); 1987-1 (power to purchase investment company shares); 1988-4 (power to sell insurance with an extension of credit); 1990-2 (power to act as an insurance agent in cities with a population less than 5,000); 1990-3 (power to become a member of the Federal Home Loan Bank); 1992-1 (power to acquire stock of another institution, if incidental to a lawful reorganization); 1995-2 (power to loan money on the security of the stock of the parent company); 1995-6 (power to own subsidiary for managing investment portfolio); 1996-1 (power to establish a subsidiary for acquiring stock of another institution pursuant to lawful reorganization); 2000-1 (power to establish a subsidiary to engage in activity that is financial in nature); and 2002-2 (power to invest in the Federal Home Loan Bank).

Additionally, the bill updates provisions relating to the holding of real estate by a bank or trust company to clarify when holding periods start and allow for extensions of time for holding a parcel or real property; includes provisions for personal property; provides that a bank will be permitted to own all or part of the stock in a single trust company or safe deposit company

organized under Kansas law; and provides that a bank can own all of the stock in a corporation or limited liability company (LLC) organized under Kansas law, owning real estate, all or a part of which is occupied or to be occupied by the bank or trust company. The bill further specifies that, with the prior approval of the Commissioner, a bank may exchange its participation interest in real estate acquired or purchased in satisfaction of any debt previously contracted for an interest in a corporation or LLC which would manage, market, and dispose of the property. The bill sets forth criteria for the bank's directors to complete prior to this exchange. (The power to exchange participation interest in property acquired by debt previously contracted created under the bill will codify Special Order 2010-1.)

The bill amends provisions relating to State Banking Board approval for non-eligible banks to branch. This approval is assigned to the Commissioner. The bill inserts provisions relating to and defining loan production activity at locations other than the place of business specified in the bank's certificate of authority or approved branch banks. The bill also updates the definition of "remote service units" and clarifies the meaning of "online" and "offline" as the terms apply to the definition. The change to the definition of "remote service units" will allow banks to operate interactive teller machines (ITMs).

The bill also updates law governing unlawful transactions to include "related interests" in the listing of such transactions which had required prior approval of the Commissioner. The bill inserts provisions relating to unlawful preferences that had been stated in KSA 9-1113. The bill also amends provisions pertaining to the management and control of a bank or trust company to add a requirement of taking and subscribing to an oath for directors and related notification to the Commissioner following an election and a requirement, following the annual meeting, on banks and trust companies to submit a certified list of stockholders and the number of shares owned by each. Further, the bill specifies that minutes must be made of each directors' meeting of a bank or trust company and actions that will be required to be recorded in such minutes. The bill also updates provisions relating to closure of a bank on a designated business day to include definitions and provisions relating to closure by proclamation (special observances and emergencies). [Emergency closures and temporary relocations provisions are generally addressed in continuing law, KSA 9-515 through 518.]

The bill also modifies a provision relating to the prohibition of establishing or maintaining a branch in Kansas on the premises or property of an affiliate engaged in commercial activities. **(Article 11)**

Transactions

The bill clarifies that the provisions of Article 12 in the Banking Code apply only to national and state chartered banks with a main office or branch in Kansas. The bill also makes clarifying amendments to a provision relating to payable-on-death accounts and incorporate provisions relating to vesting of the beneficiary's interest. **(Article 12)**

Deposit Insurance

The bill updates provisions governing deposit insurance held by banks to remove a requirement that allows a bank to opt out of having Federal Deposit Insurance Corporation (FDIC) insurance. The statute is amended to permit state banks to purchase surety bond coverage for the purpose of insuring deposits in excess of the FDIC coverage limit (this

amendment codifies Special Order 1993-1). The bill also amends a statute governing receivership and liquidation necessitated by a bank's inability to meet the demands of its depositors to remove a requirement that the FDIC, in acting as a receiver or liquidator for a bank, obtain approval from the district court prior to a sale of assets. **(Article 13)**

Deposit of Public Moneys

The bill modifies the statute pertaining to the designation of a depository for public moneys to incorporate provisions relating to the written security agreement between banks and municipalities. The bill also reorganizes definitions applicable to Article 14 and inserts definitions for the terms "Kansas national bank" and "Kansas state bank." **(Article 14)**

Safe Deposit Boxes

The bill removes a statement of policy on behalf of the State of Kansas and instead specifies banks, trust companies, and safe deposit corporations may maintain safe deposit boxes and rent the same for consideration. The bill also clarifies the relationship between what has been termed as the landlord (bank, trust company, safe deposit corporation) and tenant (user) of a safe deposit box and instead uses the terms "lessor" and "lessee." The terms are then used throughout the article. The bill also provides a process for the disposal of the contents of a safe deposit box relating to a probate proceeding. The bill restates requirements about when and how a bank could open a safe deposit box upon failure of the lessee to pay rent or surrender the box after the leasing period ends. **(Article 15)**

Trust Departments—Authority

The bill modifies the application and approval process for a bank to conduct trust business in the state. The bill also clarifies and states permissible methods for the termination of a bank's trust business – successor trustee as provided in the Uniform Trust Code or *via* contracting of the services. The bill updates a provision governing the control of a bank trust company to add directing the management or policies of the trust company. **(Article 16)**

Powers—Commissioner

The bill modifies the examination requirements specified in law to authorize the Commissioner to accept examination reports or any other reports on a state bank or trust company by the FDIC, Federal Reserve Bank, or the Consumer Financial Protection Bureau.

The bill inserts a provision relating to how a request for information associated with a requested report of a bank or trust is made. The bill also removes an authority of the Commissioner to revoke the authority of a bank or trust company to transact business in the event of a refusal of examination or investigation and instead specifies the administrative actions available to the Commissioner pursuant to KSA 9-1714, 9-1805, 9-1807, or 9-1809. The bill replaces language governing the willful refusal to be examined and the administrative remedy to provide due process for a bank or trust company. The bill clarifies when and how confidential information generated as part of an investigation or examination of a state bank or trust company will be shared.

The bill also increases the fine, from \$100 to \$1,000 for each day the violation occurs, associated with the willful violation of a prohibition on a felon serving as a director, officer, or employee of a bank. The bill amends the definition of “control” to add directing the management or policies of the trust company and update the process for change of control or merger transaction applications.

The bill updates a statute pertaining to mergers to account for modifications made to the change of control provisions and retains an exemption relating to national banks. The bill requires notification of the merger transaction and notice of publication in the community where the bank is located. **(Article 17)**

Powers—State Banking Board

The bill updates a statute pertaining to the removal of an officer or director to clarify the right to an administrative hearing and any action relating to the removal of such person or prohibition of further participation in any manner in the affairs of the state bank or trust company by the State Banking Board will be subject to review in accordance with the Kansas Judicial Review Act. **(Article 18)**

Dissolution; Insolvency

The bill replaces provisions governing the process for the dissolution of a bank’s business as a corporation and references the voluntary liquidation process (for deposits of the bank) outlined in the bill. The bill also updates the criteria for a critically undercapitalized bank or trust company to clarify that intangibles cannot be included in the calculation of capital. The bill reorganizes and specifies the permitted options available to the Commissioner when, upon examination of a bank or trust company, the institution is found to be critically undercapitalized or insolvent. A new option granted to the Commissioner authorizes the Commissioner to enter into an informal memorandum to notify the bank or trust company of the unsafe and unsound condition and requires the bank or trust company to correct the condition within the time frame prescribed by the Commissioner.

The bill also modifies and clarifies provisions relating to the appointment of a receiver for a bank or trust company. The bill provides two methods for appointment of a receiver by the Commissioner – appointment of the FDIC and appointment of any individual, partnership, association, LLC or other business entity with relevant experience in the field of banking or trust. Receivers, other than the FDIC, are required to file in the district court. The bill also provides for an expedited due process procedure. The bill clarifies the FDIC will be excepted from the procedure associated with payments to creditors after receivership. The bill also deletes and restates the process for a bank or trust company to surrender complete control of all assets and property to the Commissioner. **(Article 19)**

Crimes and Punishments

The bill generally updates references to the classification of misdemeanors (e.g., specifying Class A, nonperson misdemeanors). The bill updates a provision regarding the making of a false report to account for filing of electronic information. The bill also excepts the FDIC from a provision governing violations by a receiver. The bill eliminates a provision

pertaining to embezzlement and instead provides it is unlawful to injure, defraud, or deceive a bank or trust company for personal gain and use such entity's name for such gain.

The bill also updates the severability clause provided in Article 20 to specify the Banking Code. **(Article 20)**

Trust Companies

The bill updates provisions relating to the authority of trusts authorized to receive deposits to make a more broad reference to the Banking Code. The bill also addresses the liability of stockholders in a trust company to specify that the owners of stock be the persons deemed liable, not the persons holding trust company stock in another capacity. The bill allows either the entity holding the stock or person pledging stock as collateral security to vote as the shareholder, depending on the arrangement made.

The bill addresses the naming of trust service offices and provides limitations on the selection of and notification about the name. The bill also establishes the authority to charge a fee on applicants. **(Article 21)**

Updates to Other Laws

The bill amends a provision in employment law pertaining to pay periods and payment methods to revise the definition of "payroll card" by removing reference to KSA 9-1111d. The bill also amends the statute governing eligibility requirements for assistance to delete reference to KSA 9-1216. (Under the bill, this statute is incorporated into KSA 9-1215.)

Repealed Statutes

In addition to the 36 statutes that are recodified into new or existing statutes, 20 additional statutes are repealed with the enactment of the bill.