

SESSION OF 2015

SUPPLEMENTAL NOTE ON SENATE BILL NO. 240

As Amended by House Committee of the Whole

Brief*

SB 240 would recodify the Kansas Banking Code (Chapter 9, *Kansas Statutes Annotated*) and also make amendments to two statutes where provisions of the Banking Code are referenced. As part of the recodification, the bill would add 18 previously issued Special Orders of the Bank Commissioner to existing or new statutes and would repeal 56 statutes. Of the 56 statutes repealed, 36 would be recodified into existing or new statutes upon enactment of the bill.

Organization of the Banking Code

The Banking Code, currently, 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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- 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 would be included in this recodification of the Banking Code.

New Sections Incorporated into the Banking Code

The bill would add 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 could change or waive fees, and allowing banks to pledge to secure funds of federally recognized Indian tribes. More specifically, the bill would:

- 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; New Section 1);
- 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 (New Section 3);

- 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 (New Section 4);
- Create a new crime, providing it would 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 would, upon conviction, be guilty of a severity level 8, nonperson felony (New Section 8);
- 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 would be 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 would be authorized to waive any fee. The bill would provide 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 would permit the Commissioner to adopt rules and regulations relating to the provisions of this section and would require 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 (New Section 12); and

Note: Currently, the fees, with the exception of fees established for conversion (currently, no fee charged) and out-of-state trust facilities, are 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 would be 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; New Section 13).

The bill would recodify and add 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. (Currently, rules and regulations state applicants must pay additional costs if the Commissioner determines an on-site exam is necessary.) Pursuant to existing 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 (fee established; recodify KSA 9-1803; New Section 10).

The bill would recodify existing statutes, shown as new law, 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.

- Allow the Commissioner to temporarily close banks and trust companies in an affected area, by proclamation, in the event of an emergency. The bill would further outline the criteria and posting of notice for closure and, if approved, temporary relocation of such institutions (recodify KSA 9-515, also similar closure provisions from KSA 9-516 through 9-518; New Section 2);
- Allow 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 would be required to file its liquidation plan with the Commissioner. The bill would grant 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 (recodify KSA 9-1108; new language references receivership process, Chapter 9, Article 19; New Section 5);
- Provide 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 (recodify KSA 9-1109; New Section 6);
- Permit, 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 (recodify KSA 9-1110; New Section 7);
- Prohibit a bank or trust company from changing its place of business from one city or town to another without prior approval. The bill would specify

notification procedures and authorize 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 (recodify KSA 9-1804; New Section 9); and

- Grant authority to the State Banking Board to approve the application for the organization of a “banker’s bank” (recodify KSA 9-1808; New Section 11).

Amendments to Existing Statutes

The bill would make 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 would update the definition of “bank holding company” and specify when, in addition to methods in existing 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 would remove some of the required information and documentation to be filed with an application. The bill also would restate an applicant’s rights associated with the denial of an application and also clarify 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 would update terms and eliminate terms no longer applicable to the Banking Code. **(Article 7)**

Organization of Banks and Trust Companies

The bill would reorganize 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 (recodify KSA 9-1801 and 9-1802 into KSA 9-801). The bill also would insert provisions regarding lapsed articles of incorporation into another statute pertaining to the lapse, renewal, or extension of a bank's corporate existence (recodify KSA 9-807).

The bill also would specify 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 would amend a provision relating to conversion to a state bank to create a restriction on the naming of the bank. The bill also would amend 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 would detail 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 would increase 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 existing law, an amount equal to 8 percent of the proposed bank's estimated deposits five years after organization (the minimum capital specified in current law is an amount of at least \$250,000; the increased minimum capital requirement also would apply to banks that relocate). For trust companies, the bill would increase the minimum capital requirement from \$250,000 to \$500,000. Additionally, all banks would be required to maintain a capital ratio of at least 5 percent of equity capital to total assets at all times; this requirement also would apply to banks at the time of conversion to a state charter. The bill also would specify when the minimum capital requirements would not apply and allow the Commissioner, in the Commissioner's discretion, to approve a relocation with a smaller equity capital amount under certain circumstances. The bill also would grant 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 would update 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 clarify 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 would create a definition for "impairment" and include 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 would update the general powers section of the Banking Code (KSA 9-1101) to include several previously issued Special Orders. The Special Orders that would 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 would update 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; include provisions for personal property; provide that a bank would be permitted to own all or part of the stock in a single trust company or safe deposit company organized under Kansas law; and provide that a bank could 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 would further specify 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 would codify Special Order 2010-1.)

The bill would amend provisions relating to State Banking Board approval for non-eligible banks to branch. This approval would be assigned to the Commissioner. The bill

would insert provisions relating to and define 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 would update the definition of "remote service units" and clarify the meaning of "online" and "offline" as the terms apply to the definition. The change to the definition of "remote service units" would allow banks to operate interactive teller machines (ITMs). [This update to "remote service units" also is proposed in 2015 HB 2352.]

The bill also would update law governing unlawful transactions to include "related interests" in the listing of such transactions which, under current law, require prior approval of the Commissioner. The bill would insert provisions relating to unlawful preferences that currently are stated in KSA 9-1113. The bill also would amend 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 would specify that minutes must be made of each directors' meeting of a bank or trust company and actions that would be required to be recorded in such minutes. The bill also would update existing 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 existing law, KSA 9-515 through 518.]

The bill also would modify an existing 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 (recodify KSA 9-1139 into KSA 2014 Supp. 9-1140). **(Article 11)**

Transactions

The bill would clarify 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 would make clarifying amendments to a provision relating to payable-on-death accounts and incorporate provisions relating to vesting of the beneficiary's interest (recodify KSA 9-1216 into KSA 2014 Supp. 9-1215). **(Article 12)**

Deposit Insurance

The bill would update 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 would be 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 would codify Special Order 1993-1). The bill also would amend 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 would modify 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 (incorporate KSA 9-1405(c) into KSA 2014 Supp. 9-1401). The bill also would reorganize definitions applicable to Article 14 and insert definitions for the terms "Kansas national bank" and "Kansas state bank." **(Article 14)**

Safe Deposit Boxes

The bill would remove a statement of policy on behalf of the State of Kansas and instead specify banks, trust companies, and safe deposit corporations may maintain safe deposit boxes and rent the same for consideration. The bill also would clarify the relationship between what is currently termed as the landlord (bank, trust company, safe deposit corporation) and tenant (user) of a safe deposit box and instead use the terms “lessor” and “lessee.” The terms would then be used throughout the article. The bill also would provide a process for the disposal of the contents of a safe deposit box relating to a probate proceeding. The bill would restate 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 (the surrender of possession requirements are incorporated into KSA 9-1506 from KSA 9-1507). **(Article 15)**

Trust Departments—Authority

The bill would modify the application and approval process for a bank to conduct trust business in the state (incorporate criteria relating to approval of an application from KSA 9-1602 into KSA 2014 Supp. 9-1601). The bill also would clarify and state 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 would update 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 would modify 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 would insert a provision relating to how a request for information associated with a requested report of a bank or trust is made (incorporate 9-1707 into KSA 2014 Supp. 9-1704). The bill also would remove an existing authority of the Commissioner which permits 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 would instead specify the administrative actions available to the Commissioner pursuant to KSA 9-1714, 9-1805, 9-1807, or 9-1809. The bill also would replace language governing the willful refusal to be examined and the administrative remedy to provide due process for a bank or trust company. The bill would clarify when and how confidential information generated as part of an investigation or examination of a state bank or trust company would be shared (incorporate provisions from KSA 9-1303 into KSA 9-1712).

The bill also would increase 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 would amend 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 would update a statute pertaining to mergers to account for modifications made to the change of control provisions and retain an exemption relating to national banks. The bill would require 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 would update 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 would be subject to review in accordance with the Kansas Judicial Review Act. **(Article 18)**

Dissolution; Insolvency

The bill would replace provisions governing the process for the dissolution of a bank's business as a corporation and reference the voluntary liquidation process (for deposits of the bank) outlined in the bill. The bill also would update the criteria for a critically undercapitalized bank or trust company to clarify that intangibles cannot be included in the calculation of capital. The bill would reorganize and specify 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 would authorize the Commissioner to enter into an informal memorandum to notify the bank or trust company of the unsafe and unsound condition and require the bank or trust company to correct the condition within the time frame prescribed by the Commissioner (informal memorandums also are addressed in New Section 3).

The bill also would modify and clarify provisions relating to the appointment of a receiver for a bank or trust company. The bill would provide 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, would be required to file in the district court. The bill also would provide for an expedited due process procedure. The bill would clarify the FDIC would be excepted from the procedure associated with payments to creditors after receivership. The bill also would delete and restate 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 would generally update references to the classification of misdemeanors (e.g., specifying Class A, nonperson misdemeanors). The bill would update a provision regarding the making of a false report to account for filing of electronic information. The bill also would except the FDIC from a provision governing violations by a receiver. The bill would eliminate a provision pertaining to embezzlement and instead provide it would be 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 would update the severability clause provided in Article 20 to specify the Banking Code. **(Article 20)**

Trust Companies

The bill would update provisions relating to the authority of trusts authorized to receive deposits to make a more broad reference to the Banking Code, rather than to the act in current law. The bill also would address the liability of stockholders in a trust company to specify that the owners of stock would be the persons deemed liable, not the persons holding trust company stock in another capacity. The bill would allow 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 would address the naming of trust service offices and provide limitations on the selection of and notification about the name. The bill also would establish the authority to charge a fee on applicants (fees generally addressed in New Section 12). **(Article 21)**

Updates to Other Laws

The bill would amend 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 would amend the statute governing eligibility requirements for assistance to delete reference to KSA 9-1216. (Under the bill, this statute would be incorporated into KSA 9-1215.)

Repealed Statutes

In addition to the 36 statutes that would be recodified into new or existing statutes, 20 additional statutes would be repealed with the enactment of the bill. (Testimony described these statutes as either duplicative or obsolete and unnecessary.)

Background

The bill was introduced by the Senate Committee on Federal and State Affairs and referred to the Senate Committee on Financial Institutions and Insurance. At the hearing, representatives of the Office of the State Bank Commissioner (OSBC) indicated the bill is the culmination of a decade-long deliberative process reflecting a review of the statutes in the Code. While certain statutes have been reviewed and updated periodically, the last large overhaul of the Code was in 1999 and the previous recodification was completed in 1975. A representative of the Kansas Bankers Association (KBA) testified in support of the bill, citing the cooperative effort with the OSBC and a final product which will make it easier to navigate the code, modernize outdated language and procedures, codify Special Orders, and rectify inconsistencies with federal law. The KBA representative noted items identified in discussions with the OSBC and the resolution agreed to by the parties prior to introduction of the bill.

A representative of the Community Bankers Association (CBA) submitted neutral testimony, stating the OSBC had addressed the CBA's concerns prior to finalizing the bill and a recognition of the new authority granted to the Commissioner. The CBA, the testimony indicates, will monitor how that authority is used in practice, if the bill is enacted. No opposition testimony was presented at the Senate Committee hearing.

The Senate Committee on Financial Institutions amendments are technical in nature. Among the amendments are updates to misdemeanor crimes referenced in Article 20. These amendments were requested by a representative of the Sentencing Commission.

In the House Committee on Financial Institutions, the same conferees as the Senate Committee offered proponent and neutral testimony.

The House Committee amendments restore stricken language that require the Commissioner to submit a written summary of special orders issued during the preceding year to designated legislative committees within the first two weeks of session and create a reporting requirement on the Commissioner to provide a written summary of adopted rules and regulations establishing fees to designated appropriations and budget subcommittees within the first two weeks of session. Additionally, the Committee made several technical amendments requested by the Committee revisor.

The House Committee of the Whole amendments are technical in nature.

A fiscal note was not available at the time of either the Senate or House Committee hearings or actions on the bill.

The fiscal note issued by the Division of the Budget following the House Committee action on the bill provides information from several State agencies. First, the OSBC estimates any fiscal effect resulting from the bill would be

negligible. The bill would not increase the workload of the agency in terms of the number of examinations or the requirements for examinations. If the current filing types for banks is maintained, the Secretary of State notes the agency's current filing and fee structure could handle the changes from the bill without a fiscal effect. However, if a new filing type is needed, there would be computer programming expenses.

According to the Office of Judicial Administration, the bill could have a fiscal effect on Judicial Branch expenditures. A number of provisions would provide specific authority for district court review of agency actions pursuant to the Kansas Judicial Review Act. Also, some violations which previously resulted only in a fine would be made crimes, and the severity levels of some existing crimes would be elevated. This could increase the number of district court filings and it is possible more cases would proceed to trial or to appeal. Taken together, these changes would create more cases in the district courts causing judicial and non-judicial staff to spend more time processing, researching, and hearing cases. The bill also could increase fine revenue. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect on the Judicial Branch cannot be determined.

The Kansas Sentencing Commission indicates the bill would have no effect on prison admissions and prison beds. However, there would be a negligible effect on the probation population. The Commission expects the journal workload of the agency would increase but no additional resources would be required.

The Office of the Attorney General states it would not incur additional costs from the bill.

Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.