SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 369

As Recommended by Senate Committee on Financial Institutions and Insurance

Brief*

SB 369 would make several amendments to the Kansas Mortgage Business Act (KMBA). Specific bill provisions follow.

Definitions [Section 1]

The bill would establish definitions for the following terms:

- Application—the submission of a consumer's financial information, including the consumer's name, income and Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought, for the purpose of obtaining an extension of credit;
- Individual—a human being;
- Mortgage servicer—any person engaged in mortgage servicing;
- Mortgage servicing—collecting payment, remitting payment for another, or the right to collect or remit payment of any of the following: principal, interest, tax, insurance, or other payment under a mortgage loan; and

*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

- Not-for-profit—a business entity that is granted tax exempt status by the Internal Revenue Service.

The bill also would update the definition of "mortgage business" to include the business of holding the rights to mortgage loans in the primary market. The term "mortgage business" is found in various provisions to incorporate all activities mortgage companies engage in under the KMBA. The definition of "primary market" would be updated to mean a market where a mortgage business is conducted, including activities conducted by any person who assumes or accepts any mortgage business responsibilities of the original parties to the transaction. Additionally, the bill would clarify and reorder other existing definitions.

Entities Exempt from Licensing Requirements **[Section 2]**

The bill would add not-for-profit entities providing loans in conjunction with a mission of building or rehabilitating affordable homes to low-income consumers to the list of entities exempt from the licensing requirements of the KMBA.

The bill also would specify that any person who currently is licensed as a supervised lender under the Uniform Consumer Credit Code (UCCC) (KSA 2015 Supp. 16a-2-301 *et seq.*) and who conducts mortgage business, would no longer be exempt from licensing requirements and therefore would be a Kansas mortgage company licensed under the KMBA. [*Note:* with enactment of this bill, an estimated 150 supervised lenders that conduct mortgage business would no longer be required to file notification forms and associated annual and volume fees as supervised lenders under the UCCC by moving to being licensed under the KMBA.]

Licensing Requirements **[Sections 3 and 4]**

Under the bill, non-depository entities conducting mortgage business would be required to be licensed under the KMBA. The bill also would state a license or registration becomes effective as of the date specified in writing by the State Bank Commissioner (Commissioner). The definition of Commissioner would be modified to include the Commissioner's designee, who would be the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner (OSBC).

Display of License **[Section 6]**

The bill would remove the requirement that a licensed mortgage company display its paper license on or in a physical building of its principal place of business and any branch office. Instead, the bill would require the company to make evidence of the licensure of each licensed location in a way that reasonably assures recognition by consumers and members of the general public, which could be posted electronically.

Solicitations and Advertisements

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (commonly referred to as the SAFE Act) requires mortgage businesses to display their Nationwide Mortgage Licensing System and Registry (NMLS) license number on solicitations and advertisements. The bill would remove the requirement that the company also display a separate Kansas license number. The mortgage company would be required to maintain a record of all solicitations and advertisements for 36 months.

New Powers Granted to the Commissioner **[Section 7]**

The bill would grant the Commissioner the authority to receive and act on consumer complaints. The Commissioner also would be able to provide guidance to persons and groups on their rights and duties under the KMBA.

Additionally, the bill would permit the Commissioner to enter into any informal agreement, rather than a formal order, with a mortgage company for a plan of action to address violations of law. The informal agreement would not be subject to the Kansas Administrative Procedure Act (KAPA), the Kansas Judicial Review Act, or the Kansas Open Records Act. The informal agreement would not be considered an order or other agency action and would be considered confidential examination material. Additionally, the informal agreement would not be subject to subpoena, discovery, or admissible in evidence in any private civil action. The provisions relating to informal agreements would expire on July 1, 2021.

The bill would allow the Commissioner to issue, amend, and revoke written administrative guidance documents in accordance with KAPA.

Waiver of Liability

The bill would specify that no liability would be imposed under the KMBA for an act done or omitted by rule and regulation or written administrative interpretation of the Commissioner, except for refund of an excess charge. After the act or omission, the rule and regulation or written administrative interpretation may be determined by judicial or other authority to be invalid.

Compliance Requirements for Mortgage Companies with No Bona Fide Office **[Section 8]**

The bill would clarify bond requirements for mortgage companies with no *bona fide* office to be the same as those companies with a *bona fide* office, except the surety bond requirement will continue to differ. (Under existing law – $100,000 surety bond for mortgage companies who do not maintain a *bona fide* office, and $50,000 surety bond for those companies who maintain a *bona fide* office.)

Further, the bill would allow a mortgage company with no *bona fide* office to submit a consolidated financial statement of the parent company, in lieu of a separate balance sheet, in order to satisfy a minimum net worth of $50,000.

***Information Provided by the Mortgage Company* [Section 10]**

The bill would remove the requirement that a mortgage company maintain a journal of mortgage transactions. The bill would clarify the documentation a company must maintain for a mortgage transaction to be held and made available to the Commissioner, including:

- The name, address, and telephone number of each loan applicant;
- The type of loan applied for and the date of application; and
- The disposition of each loan application, including the date of loan funding, loan denial, withdrawal, name of lender, if applicable, and name of compensation or other fees received by the loan originator.

***Annual Report* [Section 11]**

The bill would amend the annual reporting requirements for mortgage companies to include reports filed with the NMLS.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. At the Senate Committee hearing, a representative of the OSBC indicated the bill would modernize the KMBA and would add and provide clarity for several definitions, update and remove outdated terminology, and make adjustments to simplify and reduce regulatory burden. The representative also noted that in developing the bill, the OSBC reached out to mortgage industry leaders in Kansas and nationwide to seek input and to understand the impact of the bill on mortgage business in the state. A representative of a Kansas mortgage company also testified in support of the bill, noting the bill's definitions provide clarity and the provision allowing a company to provide the NMLS call report to meet the annual requirement for the OSBC eliminates duplicative work. A representative of a consumer finance company submitted written proponent testimony, noting the OSBC reached out to the company during the bill drafting process and the company has no objections to any of the provisions. No other testimony was provided.

The fiscal note prepared by the Division of the Budget states, according to the OSBC, the bill would decrease license fee revenue for the Bank Commissioner Fee Fund by $362,000 in FY 2017. The OSBC indicates 150 supervised lenders that conduct mortgage business would no longer be required to file notification forms and associated annual and volume fees by moving to being licensed under the KMBA. Moving supervised lenders that conduct mortgage business to mortgage companies licensed under the KMBA would require a one-time transaction fee for the NMLS. The OSBC indicates it would spend approximately $21,500 for mortgage companies and branches for this one-time transaction fee.

The OSBC also indicates the bill would reduce costs associated with processing and tracking certain notification filings, answering questions about compliance issues, and issuing refunds for overpayments or collecting additional fees for underpayments. However, the cost savings are estimated to be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.