

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 241

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 241, as amended, would amend the statutes governing the regulation of loan brokers and transfer this regulation to the Office of the State Bank Commissioner. The bill also would enact new law in and amend the Kansas Credit Services Organizations Act to require registration for persons engaged in distressed property consulting services. Among the new requirements for the registrant would be maintaining a written distressed property consulting services agreement with certain disclosure requirements.

Loan Brokers Act

Among the amendments to the regulatory requirements for loan brokers, the bill would specify that the Act would be administered by the State Bank Commissioner, rather than the Securities Commissioner, and update the definition of "loan broker" to describe activities associated with the practice of mortgage business. The bill also would also amend registration requirements to set the \$250 registration fee as nonrefundable and allow this fee to be increased by rules and regulations and to require the filing of a financial statement. The bill also would create requirements for the filing of a surety bond with the Commissioner by applicants and registrants. The bond amount would be in the amount of \$50,000, but may be increased to \$1.0 million, as further defined in rules and regulations. The bill also would provide requirements for the filing of an application, including the procedure for requesting a hearing when the registration is not issued in a specified time frame. The bill

*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>

would increase the renewal fee for loan brokers from \$100 to \$250, and permit the fees to be increased by rules and regulations.

Additionally, the bill would update the requirements for the written disclosure statement provided by loan brokers to contracting parties. The bill also would allow for a procedure for hearing in accordance with the Kansas Administrative Procedure Act (KAPA) upon notice of denial, suspension, revocation or refusal to renew a loan broker's registration and outlines guidelines for the administrative action. The Bank Commissioner would be given investigatory powers under the bill, including the authority for those violations occurring prior to the regulation by the Bank Commissioner. The civil penalty would be increased from \$5,000 to \$10,000.

Distressed Property Consulting

The bill also would make amendments to the Kansas Credit Services Organization Act to establish the regulation of and define the practice of "distressed property consulting." A "distressed property" would be defined in the Act to mean "a residential real property consisting of one to four family dwelling units that is in foreclosure or at risk of loss or whose owner is more than 60 days delinquent on any loan that is secured by the property." Further, a "distressed property consultant" would mean a "person who engages in or holds out to the public as willing to engage in the business of distressed property consulting for a fee, compensation or gain, or in the expectation of a fee, compensation or gain." Distressed property consultants would be required to register under the Act and subject to the registration requirements currently applied to credit services organizations.

The bill also would amend the Act to specify prohibited activities associated with distressed property consulting and distressed property consulting agreements. Among the prohibitions, registrants would be prohibited from requesting that a consumer transfer any portion of his or her ownership

interest in a distressed property to a trust. Registrants also would be barred from making any inference to a consumer that entering into a distressed property consulting agreement will result in an improved credit rating.

The Bank Commissioner would be permitted under the Act to charge reasonable costs of investigation, examination and administration of this act, which would be paid by the applicant or registrant (credit service organizations and distressed property consultants). Additionally, the Commissioner is required to establish the fees in amounts that are sufficient to meet the budget requirements for each fiscal year. The charges for administration of the Act are to be based on the volume of consumer accounts.

Distressed property consulting as defined by the bill would not include the services of those persons who held a lien prior to the property becoming a distressed property; any service provided by a state or federally authorized or chartered bank, trust company, savings and loan association, or credit union; and the services performed by a licensed real estate broker or salesperson providing any real estate brokerage services as defined in the Real Estate Brokers' and Salespersons' License Act.

The bill will become effective upon publication in the *Kansas Register*.

Background

The bill was introduced at the request of the Office of the State Bank Commissioner whose representative indicated that the amendments to the Kansas Credit Services Organization Act put basic protections in place and allow for improved enforcement against scams. A representative of the Office of the Securities Commissioner testified in support of the bill, noting that the time is right to transfer the Loan Broker Act to the Office of the State Bank Commissioner, as the Act more naturally fits with that agency and the transfer will prevent

unscrupulous individuals from taking advantages of possible gaps between regulation of loan brokers (by the Securities Commissioner) and the Office of the State Bank Commissioner's regulation of other lenders. There were no opponents present at the time of the Committee hearing.

The Senate Committee on Financial Institutions and Insurance recommended amendments to specify the accounting standards associated with the filing of financial statements, to exclude the services by licensed real estate brokers and salespersons from the practice of distressed property consulting, and to include additional prohibited activities under the Kansas Credit Services Organization Act. The amendment pertaining to real estate brokers and salespersons was requested by a representative of the Kansas Association of Realtors. The remaining amendments were requested by the Deputy Commissioner of Mortgage Lending, Office of the State Bank Commissioner.

The fiscal note prepared by the Division of the Budget on the original bill states that the Office of the State Bank Commissioner indicates the bill would require the Office to regulate loan brokers which would have a negligible fiscal effect on its operations. The agency indicates that it would be able to perform the requirements of the bill with existing resources and staffing levels. The Office indicates that there are currently no persons registered as loan brokers under KSA 50-1001.

The Office of the Securities Commissioner indicates the transfer of oversight of loan brokers to the Office of the State Bank Commissioner would have a negligible fiscal effect on its operations. There would be negligible cost savings due to the limited number of loan broker cases investigated in recent years, which average approximately two cases per year. Services related to those cases are provided by investigators and attorneys who are involved primarily in the administration and enforcement of the Kansas Uniform Securities Act and regulations. The time spent on these cases would be reallocated to securities cases, which may enhance the timeliness of that work. Related cost savings from supplies or

communications would be negligible. If the agency would realize cost savings as a result of this bill, those savings would be included with its year-end transfer to the State General Fund. Any fiscal effect associated with the bill is not reflected in *The FY 2010 Governor's Budget Report*.