SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2101

As Amended by House Committee on Financial Institutions and Pensions

Brief*

HB 2101, as amended, would make several amendments and technical updates to the laws governing credit unions and related credit union procedures and designate Article 22 of Chapter 17, *Kansas Statutes Annotated*, as the State Credit Union Code (Code).

Definitions and Changes in Terminology

Definitions

The bill would modify, move to another section in the Code, and create new definitions:

- "Branch" (previously defined in KSA 2018 Supp. 17-2221a) would mean any office, agency, or other place of business located within the state, other than the place of business specified in the credit union's certificate of organization, at which deposits are received, checks paid, or money lent;
- "Corporate credit union" would mean a credit union that is cooperatively organized and owned by its members that offers liquidity, investment, back office processing, deposit and lending facilities, and other products and services tailored to the unique needs of its members;

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*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

- “Credit union services organization” would mean an organization established to provide operational and financial services to credit unions (this term is also defined in KSA 17-2204a);

- “Electronic notice” would mean notice that is provided in writing and delivered by electronic means to the electronic mail address specified by the member for that purpose. A member who provides an electronic mail address to the credit union for such purposes shall be deemed to have consented to receive notices and correspondence by electronic means; and

- “Federal intermediate credit bank” would mean a bank sponsored by the federal government to provide funds to financial institutions for the making of agricultural loans.

Terminology Updates

The bill would generally replace references to “nonprofit” with “not-for-profit.” The bill would also replace references to “shareholder” with “member” in the statute relating to written contracts for payment of members’ accounts to beneficiaries upon a member’s death (KSA 2018 Supp. 17-2263). Finally, the bill would remove references to federally chartered credit unions (the continuing law would only apply to state-chartered credit unions) in the statute addressing the personal liability of officers and directors of credit unions (KSA 17-2268).

Credit Unions—General Procedures and Organization

The bill would amend and make several updates relating to the general procedures and organization of credit unions, including:

- Removing a requirement that two-thirds of a credit union’s board of directors (board) must approve amendments to the credit union's bylaws or charter (KSA 2018 Supp. 17-2202);

- Subjecting entities not organized under the Code and misrepresenting themselves as a credit union or credit union organization in a website URL to be guilty of a class A misdemeanor (KSA 17-2203);

- Removing specific annual and special board meeting requirements and would instead require such meetings to be held in accordance with the credit union's bylaws (KSA 17-2207);

- Removing the requirement that persons who are denied loans may appeal the denial if the bylaws provide for such an appeal (KSA 2018 Supp. 17-2210);

- Extending the amount of time a credit union must hold a board meeting after the supervisory committee suspends an officer or member of the credit committee or board from within 7 to 21 days after the suspension to within 60 days after the suspension (KSA 2018 Supp. 17-2211);

- Removing the authority of the supervisory committee to call a meeting of shareholders by a majority vote to consider any violation of the Code or bylaws or any other practice deemed unsafe and authorized (KSA 2018 Supp. 17-2211);

- Removing the requirement that the supervisory committee must certify the accounts of its members at least once every two years using a controlled certification, or at least once a year using a controlled random statistical sampling of accounts (KSA 2018 Supp. 17-2211);

- Establishing 10.0 percent of the credit union's assets as the maximum loan amount (the limit under current law is $500 or 10.0 percent of the assets, whichever is greater) [KSA 2018 Supp. 17-2216];

- Increasing the current limitation on the aggregate of outstanding loans from $50,000 to $100,000 in a provision governing loans to directors, credit committee members, and supervisory committee members or other members for which the director or committee acts as a guarantor or endorser and removing the requirement these loans must be reported annually to the Credit Union Administrator (KSA 2018 Supp. 17-2216a);

- Clarifying corporate credit unions' compliance provisions to require compliance with the reserve requirements of the National Credit Union Administration rules and regulations (KSA 17-2217);

- Eliminating the requirement that written notice of the credit union's expulsion policy be mailed to each member of the credit union (KSA 2018 Supp. 17-2219); and

- Removing the requirement that without the written approval of the Administrator, expenditures to purchase, lease, hold, or rent real estate, as well as make capital improvements, cannot exceed 5.0 percent of of the total shareholdings, reserves, and undivided earnings of the credit union (KSA 17-2226).

Credit Unions—Powers

The bill also would amend provisions generally governing the powers of credit unions, including investment and the making of loans. Among the amendments, the bill would:

- Clarify that a credit union may invest in all types of shares and accounts of a corporate credit union that is federally insured;
- Remove a requirement that the funds of a credit union must first be used for loans to members, with preference given to small loans, if not all loans can be approved; and
- Remove the requirement that investments in corporate credit unions must not exceed 25.0 percent of the credit union's shares, undivided earnings, and reserves (KSA 2018 Supp. 17-2204).

Credit Unions—Management and Oversight

The bill would also amend statutes pertaining to the management in and oversight of state-chartered credit unions. Among those changes, the bill would:

- Allow vacancies on the credit committee and supervisory committee to be filled in accordance with the credit union's bylaws. In addition, the board would be allowed to remove members of these committees for failure to perform their duties (KSA 2018 Supp. 17-2208);
- Remove and clarify general management provisions assigned to the board and replace them with provisions requiring the board to:
  - Set the par value of shares of the credit union and the minimum of shares required for membership;
  - Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union;
  - Authorize the purchase of insurance coverage and authorize the employment and

compensation of the chief executive officer (CEO);

  - Approve an annual operating budget for the credit union;
  - Review and approve an annual audit;
  - Appoint any necessary committees;
  - Establish conditions under which a member may be removed for cause;
  - Perform such other duties or authorize any action not inconsistent with the Code;
  - Unless delegated, establish policies under which the credit union may borrow, lend, and invest money;
  - Unless delegated, act upon applications for membership;
  - Unless delegated, establish loan policies and determine loan amounts, terms, and conditions for members;
  - Unless delegated, declare dividends on shares and set interest rates on deposits; and
  - Unless delegated, approve the charge-off of credit union losses (KSA 17-2209);

- Remove the requirement that the board must approve all employee salaries (KSA 17-2209);
- Provide that certificates of merger no longer need to be made in triplicate (KSA 2018 Supp. 17-2228);
- Create a minimum threshold by requiring a credit union selling assets valued at greater than 10.0 percent of either the purchasing credit union's or the selling credit union's total amount of shares, undivided earnings, and reserves to file a copy of the agreement with the Administrator within one month of signing the agreement (KSA 17-2229);

- Remove requirements on the Administrator to establish an annual salary schedule for financial examiners, financial examiner administrators, case managers, a business manager, and administrative assistant based on an equitable salary schedule approved by the Governor (KSA 2018 Supp. 17-2234); and

- Remove the requirement on the salary schedule to not exceed the average compensation of corresponding state regulatory positions in similar areas (KSA 2018 Supp.17-2234). [*Note:* The salary schedule provisions were authorized by 2012 House Sub. for SB 287.]

The bill would also make several technical and conforming updates.

Background

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of the Heartland Credit Union Association (HCUA). In the hearing in the House Committee, the HCUA representative stated the bill would bring Kansas law up-to-date and continue to protect the locally operated, not-for-profit structure of credit unions. The representative noted a task force composed of credit union CEOs and compliance experts reviewed credit union statutes and developed a set of recommendations (contained in this bill), which were reviewed with the Kansas Department of Credit Unions (KDCU) and are in alignment with federal credit union laws. Written-only proponent testimony was submitted by a representative of the Kansas Cooperative Council.

No neutral or opponent testimony was provided.

The House Committee amended the bill to restore a statutory membership requirement of at least three members for credit and supervisory committees. The House Committee amendment also makes a technical amendment requested by the Committee's revisor.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDCU indicates the bill would have no fiscal effect on the KDCU.