

SENATE BILL No. 82

By Committee on Financial Institutions and Insurance

2-4

1 AN ACT concerning financial institutions; relating to the state banking
2 code; form of delivery of certain notices; certificates of existence;
3 conversion to state banks; amending K.S.A. 2018 Supp. 9-550, 9-808,
4 9-908 and 9-1506 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 9-550 is hereby amended to read as
8 follows: 9-550. (a) For any deposit account, loan account or other banking
9 relationship hereinafter referred to as "account," that is opened by one or
10 more persons acting or purporting to act for or on behalf of an entity with
11 any financial institution transacting business in this state, such person may
12 provide the financial institution with a certificate to provide evidence of
13 the existence of the entity and the authority of the person to act for or on
14 behalf of the entity with respect to the account.

15 (b) The certificate of existence and authority shall be an affidavit
16 executed by such person and shall include the following, as applicable:

- 17 (1) The name and mailing address of the entity;
18 (2) the type of entity and the state, country or other governmental
19 authority, under which laws, the entity was formed;
20 (3) the organization date of the entity;
21 (4) the name, mailing address and office or other position held by the
22 person executing the certificate; and
23 (5) a statement that the board of directors, managers, members,
24 general partners or other governing body of the entity opening the account
25 has duly taken all action legally required to open the account in the name
26 of the entity and the name, office or other position of the person who has
27 been duly authorized to engage in transactions with respect to the account,
28 including any limitation that may exist upon the authority of such person
29 to bind the entity and any other matters concerning the manner in which
30 such person may deal with the account.

31 (c) If a financial institution accepts a certificate of existence and
32 authority pursuant to this section, the financial institution may open and
33 administer the account in accordance with the information set forth therein
34 and shall not be liable for so doing, even if any such information is
35 inaccurate, unless the financial institution has actual knowledge of such
36 inaccuracy or knowledge sufficient to cause a reasonably prudent person to

1 doubt the accuracy of such information.

2 (d) Nothing in this section shall be construed to prohibit a financial
3 institution from requesting additional information or requiring other
4 agreements in order to establish an account for an entity, including,
5 without limitation, a resolution, certificate of good standing, request for a
6 taxpayer identification number, entity agreements or documents or parts
7 thereof evidencing the existence of the entity or the authority of the person
8 executing the certificate, and an indemnification that is acceptable to the
9 financial institution. *No party may infer that the financial institution*
10 *relying on the certificate of existence has knowledge of the terms of the*
11 *entity's documentation solely because it holds a copy of all or a part of the*
12 *entity's documentation.*

13 (e) As used in this section:

14 (1) "Entity" means any government or governmental subdivision or
15 agency, any domestic or foreign corporation, limited liability company,
16 general partnership, limited liability partnership, joint venture,
17 cooperative, association or other legal entity, whether operated for profit or
18 not-for-profit; and

19 (2) "financial institution" means any federal- or state-chartered
20 commercial bank, savings and loan association or savings bank.

21 (f) This section shall be a part of and supplemental to the state
22 banking code.

23 Sec. 2. K.S.A. 2018 Supp. 9-808 is hereby amended to read as
24 follows: 9-808. (a) Any national bank, federal savings association or
25 federal savings bank organized under the laws of the United States and
26 located in this state may become a state bank upon the affirmative vote of
27 not less than $\frac{2}{3}$ of the institution's outstanding voting stock or *voting*
28 *interests of* members. Any national bank, federal savings association or
29 federal savings bank desiring to become a state bank shall apply to the
30 commissioner for permission to convert to a state bank and:

31 (1) Shall submit a transcript of the minutes of the meeting of the
32 institution's stockholders or *voting interests of* members showing approval
33 of the proposed conversion;

34 (2) the name selected for the bank shall not be the name of any other
35 bank: (A) Doing business in the same city or town; or

36 (B) within a 15-mile radius of the location of the converted
37 institution. The name shall be accepted or rejected by the commissioner,
38 although any bank may request exemption from the commissioner from
39 this paragraph; and

40 (3) provide any other information required in the application form
41 prescribed by the commissioner.

42 (b) A federal savings association or federal savings bank operating in
43 a mutual form and ~~which seeks~~ *seeking* to become a stock bank must also

1 convert to a stock form prior to converting to a state bank and shall submit
2 appropriate documentation to the commissioner to show that the
3 appropriate federal regulator has approved such mutual to stock
4 conversion.

5 (c) Upon receipt of each of the items required by this section the
6 commissioner shall make or cause to be made such investigation as the
7 commissioner deems necessary to determine whether:

8 (1) All state and federal requirements for a conversion have been
9 satisfied;

10 (2) the conversion or the financial condition of the bank will not
11 adversely affect the interests of the depositors;

12 (3) the resulting state bank will have an adequate capital structure in
13 accordance with K.S.A. 9-901a et seq., and amendments thereto; and

14 (4) the competence, experience or integrity of the proposed
15 management personnel indicates that approving the conversion would be
16 in the interest of the depositors of the bank and in the interest of the public.

17 (d) If the commissioner determines each of the matters in subsection
18 (c) favorably, the conversion shall be approved, and the commissioner
19 shall issue a certificate of authority. Upon issuance of a certificate of
20 authority, the articles of incorporation, duly executed as required by the
21 Kansas corporate code, shall be filed with the Kansas secretary of state's
22 office.

23 (e) In any conversion authorized by this section, the resulting state
24 bank by operation of law shall continue all trust functions being exercised
25 by the national bank, federal savings association or federal savings bank
26 and shall be substituted for the national bank, federal savings association
27 or federal savings bank and shall have the right to exercise trust or
28 fiduciary powers created by any instrument designating the national bank,
29 federal savings association or federal savings bank, even though such
30 instruments are not yet effective.

31 (f) In any conversion authorized by this section, the resulting state
32 bank shall succeed by operation of law without any conveyance or transfer
33 by the act of the national bank, federal savings association or federal
34 savings bank to all the actual or potential assets, real property, tangible
35 personal property, intangible personal property, rights, franchises and
36 interests, including those in a fiduciary capacity of the national bank,
37 federal savings association or federal savings bank and shall be subject to
38 all of the liabilities of the national bank, federal savings association or
39 federal savings bank.

40 (g) In any conversion authorized by this section the corporate
41 existence of the national bank, federal savings association or federal
42 savings bank shall be continued in the resulting state bank, and the
43 resulting state bank shall be deemed to be the identical corporate entity as

1 the national bank, federal savings association or federal savings bank.

2 (h) Within a reasonable time after the effective date of the conversion,
3 the resulting state bank shall divest all assets and liabilities that do not
4 conform to state banking laws and rules and regulations. The length of this
5 transition period shall be determined by the commissioner.

6 Sec. 3. K.S.A. 2018 Supp. 9-908 is hereby amended to read as
7 follows: 9-908. (a) Upon the affirmative vote of $\frac{2}{3}$ of the voting shares of
8 the common stock of a stock bank or trust company, and with the prior
9 approval of the commissioner, a stock bank or trust company may issue
10 preferred stock of one or more classes. The stockholders shall have a
11 meeting to vote on the issuance of preferred stock. Notice of this meeting
12 shall be given to all stockholders at least five days in advance of the date
13 of the meeting by registered *or certified* mail, *or electronically pursuant to*
14 *the uniform electronic transactions act, K.S.A. 16-1601 et seq., and*
15 *amendments thereto.*

16 (b) No preferred stock shall be retired unless the common stock shall
17 be increased in an amount equal to the amount of the preferred stock
18 retired. All preferred stock shall be retired consistent with safety to the
19 depositors.

20 Sec. 4. K.S.A. 2018 Supp. 9-1506 is hereby amended to read as
21 follows: 9-1506. (a) The lessor shall have a lien upon the contents of any
22 safe deposit box for the rental thereon.

23 (b) The lessor may, after giving not less than 60 days' written notice
24 to the lessee of such lessor's intention to enter the box, remove the contents
25 and sell the same for the payment of rent due or other expenses incurred
26 by the bank in keeping the contents, open the box forcibly and remove the
27 contents in the presence of two of the lessor's employees, one of whom
28 shall be an officer, when:

29 (1) The lessee has not paid the rent within 30 days after the same is
30 due; or

31 (2) the lessee has failed to surrender possession of any box within 30
32 days from the date of the termination of the lease.

33 (c) The lessor shall retain such contents for at least 90 days after
34 opening the box. The lessor then may sell any part or all of the contents at
35 public sale pursuant to the requirements for a commercially reasonable
36 sale under article 9 of the Kansas uniform commercial code and retain
37 from the proceeds of sale the rent due, the costs of opening and repairing
38 the box, the costs of sale and any other amounts due to the lessor.

39 (d) Any article, item or document without apparent market value may
40 be destroyed after two years from the date of giving or mailing the
41 required notice.

42 (e) Any notice required by this section shall be delivered either
43 personally or by registered *or certified* mail, *or electronically pursuant to*

1 *the uniform electronic transactions act, K.S.A. 16-1601 et seq., and*
2 *amendments thereto*, delivered to the latest address shown on the safe
3 deposit records of the lessor.

4 Sec. 5. K.S.A. 2018 Supp. 9-550, 9-808, 9-908 and 9-1506 are hereby
5 repealed.

6 Sec. 6. This act shall take effect and be in force from and after its
7 publication in the statute book.