

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 240

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 240 would enact new law and amend the Uniform Consumer Credit Code (UCCC) and the Kansas Mortgage Business Act (KMBA) to amend and establish standards for the regulation of mortgages and mortgage loan originators. Among the amendments in the bill, the bill would:

- **Computation of Time (UCCC).** Specify that any period of time included in provisions of the UCCC would be calculated in calendar days.
- **Mortgage Loan Originators, Powers of the Administrator and Prohibited Practices (UCCC).** Allow the Administrator to deny, revoke, or suspend the registration of a residential mortgage loan originator under certain findings, including if the applicant or registrant has been convicted of any crime involving fraud, dishonesty or deceit, or the applicant or registrant has not completed all requirements for registration or renewal.

The Act also would specify prohibited practices for licensees and registrants including: delaying the closing of a loan for the purpose of increasing interest, costs, fees or charges payable by the borrower and engaging in any fraudulent lending or underwriting practices.

- **Definitions (KMBA).** Amend the definition of “loan originator” and add definitions for “loan processor or underwriter”, “clerical or support duties” as it applies to

*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>

loan processors and underwriters, “Nationwide Mortgage Licensing System and Registry”, and “unique identifier.”

- **Participation Requirements, Nationwide Mortgage Licensing System and Registry (KMBA).** Require mortgage business involving loan origination, in addition to registration, to maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry (if operational at the time of registration).
- **Licensure, Mortgage Business (KMBA).** Amend required licensure from biennial to annual.
- **Criteria for Denial of Applicant for Registration (KMBA and UCCC).** Specify criteria in which the Commissioner would not be allowed to grant a registration to loan originators (includes felony convictions, license or registration revocation in other jurisdictions). Similar amendments would be made to the UCCC to specify application criteria for the Administrator.
- **Regulation By the Commissioner—Rules and Regulations; Fees; Education; and Fingerprinting (KMBA).** Permit the Commissioner to adopt rules and regulations to implement the requirements of the S.A.F.E. Act. Enhance investigative authority to include controlling access to documents and records of the licensee or registrant under examination or investigation. The Commissioner is required to establish fees associated with administration of the Act with the charges to be based on the licensee’s loan volume. For education – specify prelicensing education hours (applicants) and completion of continuing education (CE) hours on an annual basis (previously biannual for CE). For fingerprinting – Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agency.

Additional provisions would be added allow the Commissioner to use the registry for requesting and distributing information regarding loan originators and

mortgage companies, for collecting and transacting fees, for reporting violations of the law and enforcement activities, and for filing reports.

- **Surety Requirements (KMBA).** Amend surety standards and permit the Commissioner to establish an amount (not less than \$50,000 for *bona fide* office; \$100,000 for applicant or licensee who does not maintain a *bona fide* office) in rules and regulations; specify terms of the bond.
- **Prohibited Practices, Amendments (KMBA).** Specify additional prohibited practices in the Act to include the solicitation, advertisement or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of the solicitation, advertisement, or contract.
- **Recordkeeping (KMBA).** Allow the Commissioner to adopt rules and regulations to specify a records retention period. Require licensees to establish security procedures for records and arrange for preservation of those records.
- **Mortgage Transactions, Journal Entries (KMBA).** Require inclusion of the name of the loan originator and recording of any compensation or other fees.
- **Definitions (UCCC).** Add definitions for “residential mortgage loan originator”, “loan processor or underwriter”, “Nationwide Mortgage Licensing System and Registry”, “residential mortgage loan”, “registrant”, and “unique identifier.”

Additionally, the bill would make similar amendments to the UCCC to include prohibited acts and define the practices and registration of mortgage loan originators (as outlined above for requirements applied to the Kansas Mortgage Business Act).

Background

The bill was introduced at the request of the Office of the State Bank Commissioner whose representative indicated that Congress recently enacted the Housing and Economic Recovery Act of 2008 with provisions in Title V of the Act (the S.A.F.E. Mortgage Licensing Act) containing certain federal requirements applicable to the state regulation of mortgage loan originators. The central goal of the S.A.F.E. Act, the representative noted, is to facilitate mortgage regulation by implementing a nationwide mortgage loan originator registry to encourage uniform applications and reporting requirements for loan originators. The majority of the amendments in the bill are designed to bring current state law into compliance with the provisions of the Act (federal law requires states to implement these requirements by July 31, 2009). Proponents of the bill included two representatives of the Kansas Association of Mortgage Professionals and the Kansas Association of Financial Services. The Kansas Bankers Association provided written testimony in support of the bill. The Kansas Manufactured Housing Association testified as a neutral party and requested an amendment to clarify that manufactured housing retailers were not within the scope of persons who are "loan originators" under the federal S.A.F.E. Act.

The fiscal note prepared by the Division of the Budget states that the Office of the State Bank Commissioner indicated the bill would result in an increase in the number of loan originators that would be registered with the agency. However, the note continues, the agency is unable to provide an estimate on the additional revenue and expenditures that would be generated. The agency does not anticipate any additional staff would be required as a result of this bill. Any fiscal effect associated with the bill is not reflected in *The FY 2010 Governor's Budget Report*.