

Proposed Senate Substitute for HOUSE BILL NO. 2619

AN ACT concerning financial institutions; enacting the Kansas economic recovery loan deposit program; relating to credit unions, field of membership; banks, trust companies and savings and loan institutions, privilege tax, deduction of net interest received from certain agricultural real estate loans and single family residence loans; amending K.S.A. 75-4237 and 79-1109 and K.S.A. 2019 Supp. 17-2205 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 7, and amendments thereto, shall be known and may be cited as the Kansas economic recovery loan deposit program.

(b) The Kansas economic recovery loan deposit program shall be a part of and supplemental to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. As used in the Kansas economic recovery loan deposit program: (a) "Director of investments" means the person referred to in K.S.A. 75-4222, and amendments thereto;

(b) "economic recovery loan deposit" means an investment account placed by the director of investments under the provisions of article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, with an eligible lending institution for the purpose of carrying out the intent of the Kansas economic recovery loan deposit program;

(c) "economic recovery loan deposit loan" or "loan" means a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's economic recovery loan deposit as part of the economic recovery loan deposit program;

(d) "economic recovery loan deposit loan package" means the forms provided by the state treasurer for the purpose of applying for an economic recovery loan deposit;

(e) "economic recovery loan deposit program" or "program" means a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit.

(f) "eligible borrower" means any individual or entity operating a business primarily for commercial or agricultural purposes and is not an individual obtaining a loan primarily for personal, family or household purposes; and

(g) "eligible lending institution" means a financial institution that is:

(1) A bank, as defined under K.S.A. 75-4201, and amendments thereto, that agrees to participate in the program and is eligible to be a depository of state funds;

(2) a credit union, as defined under K.S.A. 17-2231, and amendments thereto, that agrees to participate in the program and that provides securities acceptable to the pooled money investment board pursuant to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto; or

(3) an institution of the farm credit system organized under the federal farm credit act of 1971, 12 U.S.C. § 2001, as in effect on July 1, 2020, that agrees to participate in the program and that provides securities acceptable to the pooled money investment board pursuant to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. (a) (1) The state treasurer is hereby authorized to administer the Kansas economic recovery loan deposit program.

(2) The program shall be for the purpose of providing incentives for the making of business loans.

(3) The total aggregate amount of economic recovery loan deposit loans under the

program shall not exceed \$60,000,000 of unencumbered funds pursuant to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

(b) The state treasurer shall adopt all rules and regulations necessary to enact and administer the provisions of the Kansas economic recovery loan deposit program. Such rules and regulations shall be adopted not later than February 1, 2021.

(c) The state treasurer shall submit an annual report to the governor and the legislature identifying the eligible lending institutions that are participating in the program and the eligible borrowers who have received an economic recovery loan. The annual report shall provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. Such report shall be due on or before January 1, 2022, and each January 1 thereafter.

New Sec. 4. (a) The state treasurer is hereby authorized to disseminate information and to provide economic recovery loan deposit loan packages to the lending institutions eligible for participation in the Kansas economic recovery loan deposit program.

(b) The economic recovery loan deposit loan package shall be completed by the eligible borrower before being forwarded to the lending institution for consideration.

(c) (1) An eligible lending institution that agrees to receive an economic recovery loan deposit shall accept and review applications for loans from eligible borrowers.

(2) The lending institution shall apply all usual lending standards to determine the credit worthiness of eligible borrowers.

(3) No single economic recovery loan deposit loan shall exceed \$250,000.

(4) Only one economic recovery loan deposit loan shall be made and be outstanding at any one time to any eligible borrower.

(5) No loan shall be amortized for a period of more than 10 years.

(d) An eligible borrower shall certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in operating the borrower's business.

(e) The eligible lending institution may approve or reject an economic recovery loan deposit loan package based on the lending institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package and other appropriate considerations.

(f) The eligible lending institution shall forward to the state treasurer an approved economic recovery loan deposit loan package in the form and manner prescribed and approved by the state treasurer. The package shall include information regarding the amount of the loan requested by each eligible borrower and such other information regarding each eligible borrower that the state treasurer may require. Such package shall include a certification by the applicant that such applicant is an eligible borrower.

New Sec. 5. (a) The state treasurer may accept or reject an economic recovery loan deposit loan package based on the state treasurer's evaluation of whether the loan to the eligible borrower meets the requirements of the Kansas economic recovery loan deposit program. If sufficient funds are not available for an economic recovery loan deposit, then the applications may be considered in the order received when funds are once again available, subject to a review by the lending institution.

(b) Upon acceptance, the state treasurer shall certify to the director of investments the amount required for such economic recovery loan deposit loan package, and the director of investments shall place an economic recovery loan deposit in the amount certified by the state

treasurer with the eligible lending institution at an interest rate that is 2% below the market rate as provided in K.S.A. 75-4237, and amendments thereto, and which shall be recalculated on the first business day of January of each year using the market rate then in effect. The minimum interest rate shall be 0.25% if the market rate is below 2.25%. When necessary, the state treasurer may request the director of investments to place such economic recovery loan deposit with the eligible lending institution prior to acceptance of an economic recovery loan deposit loan package.

(c) The eligible lending institution shall enter into an economic recovery loan deposit agreement with the state treasurer, which shall include requirements necessary to implement the purposes of the Kansas economic recovery loan deposit program. Such requirements shall include an agreement by the eligible lending institution to lend an amount equal to the economic recovery loan deposit to eligible borrowers at an interest rate that is not more than 3% greater than the interest rate on economic recovery loan deposits as provided in subsection (b). Such rate shall be recalculated on the first business day of January of each year using the market rate then in effect. The agreement shall include provisions for the economic recovery loan deposit to be placed for an annually renewable one-year maturity up to a period of 10 years considered appropriate in coordination with the underlying economic recovery loan. The agreement shall include provisions for the reduction of the economic recovery loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

New Sec. 6. Upon the placement of an economic recovery loan deposit with an eligible lending institution, the institution shall fund the loan to each approved eligible borrower listed in the economic recovery deposit loan package in accordance with the economic recovery loan

deposit agreement between the institution and the state treasurer. The loan shall be at a rate as provided in section 5(c), and amendments thereto. A certification of compliance with this section in the form and manner as prescribed by the state treasurer shall be required of the eligible lending institution.

New Sec. 7. The state of Kansas and the state treasurer shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on any economic recovery loan deposit loan to an eligible borrower. Any delay in payments or default on the part of an eligible borrower does not in any manner affect the economic recovery loan deposit agreement between the eligible lending institution and the state treasurer.

Sec. 8. K.S.A. 2019 Supp. 17-2205 is hereby amended to read as follows: 17-2205. (a) (1) The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same, and have complied with such other requirements as the articles of incorporation may contain.

(2) Once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union.

(3) Members of a credit union also may include the following:

(A) The spouse of any person who died while such person was within the field of membership of the credit union;

(B) any employee of the credit union;

(C) any person who retired from any qualified employment group within the field of

membership;

(D) any person of a volunteer group recognized by the management of the association or employee group within the field of membership and such person: (i) Has completed a training program offered by the volunteer group to further its goals; (ii) serves on the board of the volunteer group; or (iii) serves as an officer of the volunteer group;

(E) any member of such person's immediate family or household;

(F) any organization whose membership consists of persons within the field of membership; and

(G) any corporate or other legal entity within the field of membership as identified in the charter, articles of incorporation or bylaws of the credit union.

(4) For the purposes of subparagraph (E) of paragraph (3)(E):

(A) Except as provided in subparagraph (B), the term "immediate family or household" ~~shall mean~~ means spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse and persons living in the same residence maintaining a single economic unit with persons within the credit union's field of membership.

(B) If the credit union's bylaws adopted a definition of immediate family before June 30, 2008, the credit union may use that definition. A credit union may adopt a more restrictive definition of immediate family or household.

(C) If authorized in the credit union's bylaws, a member of the immediate family or household is eligible to join even when the eligible member has not joined the credit union.

(b) (1) Credit union organizations shall be limited to:

(A) A group having a single common bond of occupation or association;

(B) a group having multiple common bonds of occupation or association or any combination thereof. No such group shall have a membership of more than 3,000, except as permitted in ~~subsections~~ subsection (c) or (d); or

(C) persons residing, working or worshipping in or organizations located within a geographic area.

(2) A common bond of occupation may include employees of the same employer, workers under contract with the same employer, businesses paid by the same employer on a continuing basis or employees in the same trade, industry or profession.

(3) A common bond of association may include members and employees of a recognized association as defined in such association's charter, bylaws or other equivalent document.

(c) A credit union ~~which that~~ chooses to be limited as provided in ~~subparagraph (C) of paragraph (1) of subsection (b)(1)(C)~~ may include one or more common bonds of occupation or one or more common bonds of association or any combination thereof with no limitation on the number of members, if the employer or association is located in the geographic area of the credit union.

(d) A group formed with multiple common bonds of occupation or association may exceed 3,000 members, if the administrator determines in writing that such group could not feasibly or reasonably establish a new single common bond credit union because the group:

(1) Lacks sufficient volunteer and other resources to support the efficient and effective operation of a credit union;

(2) does not meet the criteria established by the administrator indicating a likelihood of

success in establishing and managing a new credit union, including demographic characteristics such as geographical location of members, diversity of ages and income levels, and other factors that may affect the financial viability and stability of a credit union; or

(3) would be unlikely to be able to operate in a safe and sound manner.

(e) (1) A geographic area may include:

(A) A single political jurisdiction;

(B) multiple contiguous political jurisdictions if the aggregate total of the population of the geographic area does not exceed ~~500,000, except as provided in subparagraph (C) or in subsections (i), (j), (k) and (l); or~~

~~(C) if the headquarters of the credit union is located in a MSA, the geographic area may include one or more political jurisdictions which share a common border to the MSA if the aggregate total of the population of the geographic area does not exceed 1,000,000. The maximum population available for any credit union whose headquarters is located within a MSA shall be adjusted by the administrator based upon the population data for the largest MSA in the state of Kansas, or any portion thereof located within the state of Kansas. The maximum population available for any credit union whose headquarters is located within a MSA shall be determined by multiplying the population of the largest MSA in the state of Kansas, or that portion of such MSA located within the state of Kansas if the boundaries of such MSA extend outside the state of Kansas, as determined by the most recent population data, by the fraction having a numerator of 1,000,000 and a denominator of 750,000 for the purposes of this section, the administrator shall use population data based upon the adjusted federal census information presented to the legislature by the secretary of state pursuant to K.S.A. 11-304, and amendments~~

thereto 2,500,000, as determined by official state population figures for the state of Kansas, or any portion thereof, that are identical to the decennial census data from the actual enumeration conducted by the United States bureau of the census and used for the apportionment of the United States house of representatives in accordance with K.S.A. 11-304, and amendments thereto.

(2) ~~Except as provided in subsections (i), (j), (k) and (l), from and after July 1, 2008,~~
No geographic area shall consist of ~~any congressional district or~~ the entire state of Kansas.

(f) (1) ~~Except as provided in subsections (i), (j), (k) and (l), from and after July 1, 2008,~~
No credit union shall change or alter its field of membership except as provided in this section. Before a credit union can alter or change its field of membership, such credit union shall file, or cause to be filed, with the administrator, an application for amendment to its field of membership. The application shall include:

(A) Documentation showing that the proposed area or groups to be served meets the statutory requirements for field of membership set forth in this statute;

(B) pro forma financial statements for the first two years after the proposed alteration of or change in field of membership, including any assumption regarding growth in membership, shares, loans and assets;

(C) a marketing plan addressing how the proposed field of membership will be served;

(D) the financial services to be provided to the credit union's members;

(E) a local map showing the location of both current and proposed headquarters and branches; and

(F) the anticipated financial impact on the credit union in terms of need for additional

employees and fixed assets.

(2) (A) The application shall also include a proof of publication of the notice that the affected credit union intends to file or has filed an application to alter or change its field of membership. Such notice shall be in the form prescribed by the administrator and shall at a minimum contain the name and address of the applicant credit union and a description of the proposed alteration of or change in the field of membership.

(B) The notice shall be published for two consecutive weeks in the Kansas register. The required publications shall occur within 60 days of and prior to the effective date of the proposed change. The applicant shall provide proof of publication to the administrator.

(g) For the purposes of this section:

~~(1) "MSA" means a metropolitan statistical area as defined by the United States department of commerce which has more than one county located in Kansas. If the boundaries of such MSA extend outside the state of Kansas only that portion of such MSA located within the state of Kansas shall be considered for the purposes of this section.~~

~~(2) "political jurisdiction" means a city, county, township or clearly identifiable neighborhood.~~

~~(3) "Population data" means official state population figures for the state of Kansas, or any portion thereof, which are identical to the decennial census data from the actual enumeration conducted by the United States bureau of the census and used for the apportionment of the United States house of representatives in accordance with K.S.A. 11-304, and amendments thereto.~~

~~(h) No increase in the population reflected by the population data shall require a~~

~~modification to a field of membership as in existence on June 30, 2008.~~

~~(i) Notwithstanding any other provisions of this section, any person, including any member of such person's immediate family or household, or organization that is a member of any credit union which was in existence on June 30, 2008, may continue to be a member of such credit union after such date. For the purposes of this subsection, if the term "member" refers to an individual, the term member may include any other person who is a member of such individual's immediate family or household as specified in subsection (a).~~

~~(j) (1) Notwithstanding any other provisions of this section:~~

~~(A) Any branch of a credit union that is in existence as of February 1, 2008, may continue to operate in the county where it is located on and after June 30, 2008. If such branch is unable to continue operations due to a natural disaster, eminent domain proceedings, loss of lease, loss of sponsor space or any condition outside of the control of the credit union, the credit union may establish a replacement branch in that county.~~

~~(B) Any credit union which has taken an overt step toward the construction of a new building, facility or branch on or before February 1, 2008, may continue to construct and operate the new building, facility or branch in the city in which such new building, facility or branch is located even if the construction is not completed on or before June 30, 2008. If such branch is unable to continue operations due to a natural disaster, eminent domain proceedings, loss of lease, loss of sponsor space or any condition outside of the control of the credit union, the credit union may establish a replacement branch in that city.~~

~~(2) For the purposes of this subsection, the term "overt act" includes the:~~

~~(A) Purchase of or entering into a contract for the purchase of any necessary tract of~~

~~land for the location of such new building, facility or branch of an existing credit union.~~

~~(B) Acquisition or lease of a building for the purpose of housing a new facility or branch of an existing credit union.~~

~~(C) Adoption of architectural drawings for the construction of a new building, facility or branch of an existing credit union.~~

~~(D) Adoption of architectural drawings for the renovation of an existing building for use as a facility or branch of an existing credit union.~~

~~(k) Notwithstanding any other provisions of this section, a member of any occupation or association group whose members constituted a portion of the membership of any credit union as of February 1, 2008, shall continue to be eligible to become a member of that credit union, by virtue of membership in that group on and after June 30, 2008. For purposes of this subsection, a patron of an organization is eligible for membership if such patron is an individual who uses the products and services of the organization which is included in the field of membership of the credit union at the time the patron applies for membership in the credit union.~~

~~(l) Notwithstanding any other provisions of this section, any credit union:~~

~~(1) Which has been granted a field of membership on or before February 1, 2008, which includes the entire state of Kansas or its residents shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population not to exceed 1,000,000. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total. Any credit union with its headquarters located in a county that is not part of a MSA shall not include more than one MSA in its entirety in its~~

~~adopted field of membership.~~

~~(2) With its headquarters located within a MSA as of February 1, 2008, may continue to include multiple contiguous political jurisdictions that were included in its field of membership as of February 1, 2008; if the aggregate total population of such multiple contiguous political jurisdictions does not exceed 1,000,000. If the field of membership of any credit union involves multiple contiguous political jurisdictions that have an aggregate total population that exceeds 1,000,000 as of February 1, 2008, then such credit union shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population which does not exceed 1,000,000. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total.~~

~~(3) With headquarters located in a county that is not part of a MSA may continue to include multiple contiguous political jurisdictions that were included in its field of membership as of February 1, 2008, if the aggregate total population of such multiple contiguous political jurisdictions does not exceed 1,000,000 population total. If the field of membership of any credit union involves multiple contiguous political jurisdictions that have an aggregate total population that exceeds 1,000,000 as of February 1, 2008, then such credit union shall, on or before January 1, 2009, adopt a field of membership that may include multiple contiguous political jurisdictions having an aggregate total population which does not exceed 1,000,000 population total. The population of the county of any branch of such credit union not located within the adopted field of membership shall not be included in the 1,000,000 population total. The adopted field of membership of such credit union shall not include more than one MSA in its entirety.~~

Sec. 9. K.S.A. 75-4237 is hereby amended to read as follows: 75-4237. (a) The director of investments shall accept requests from banks interested in obtaining investment accounts of state moneys. Such requests may be submitted any business day and shall specify the dollar amount and maturity. The director of investments is authorized to award the investment account to the requesting bank at the market rate established by subsection (b). Awards of investment accounts pursuant to this section shall be subject to investment policies of the pooled money investment board. When multiple requests are received and are in excess of the amount available for investment that day for any maturity, awards shall be made available in ascending order from smallest to largest dollar amount requested, subject to investment policies of the board.

(b) The market rate shall be determined each business day by the director of investments, in accordance with any procedures established by the pooled money investment board. Subject to any policies of the board, the market rate shall reflect the highest rate at which state moneys can be invested on the open market in investments authorized by ~~subsection (a) of~~ K.S.A. 75-4209(a), and amendments thereto, for equivalent maturities.

(c) (1) Notwithstanding the provisions of this section, linked deposits made pursuant to the provisions of K.S.A. 2-3703 through 2-3707, and amendments thereto, shall be at an interest rate ~~which that~~ that is 2% less than the market rate determined under this section and which shall be recalculated on the first business day of each calendar year using the market rate then in effect.

(2) Notwithstanding the provisions of this section, agricultural production loan deposits made pursuant to the provisions of K.S.A. 75-4268 through 75-4274, and amendments thereto, shall be at an interest rate that is 2% less than the market rate provided by this section and which shall be recalculated on the first business day of each calendar year using the market rate then in

effect.

(3) Notwithstanding the provisions of this section, economic recovery loan deposits made pursuant to the Kansas economic recovery loan deposit program shall be at an interest rate that is 2% less than the market rate provided by this section and which shall be recalculated on the first business day of each calendar year using the market rate then in effect.

(d)(1) The director of investments may place deposits through a selected bank, savings and loan association or savings bank ~~which~~ that is part of a reciprocal deposit program in which the bank, savings and loan association or savings bank:

~~(1)(A)~~ Receives reciprocal deposits from other participating institutions located in the United States in an amount equal to the amount of funds deposited by the municipal corporation or quasi-municipal corporation; and

~~(2)(B)~~ for which the total cumulative amount of each deposit does not exceed the maximum deposit insurance amount for one depositor at one financial institution as determined by the federal deposit insurance corporation.

(2) Such deposits shall not be treated as securities and need not be secured as provided in this or any other act, except that such deposits shall be secured as provided in K.S.A. 75-4218, and amendments thereto, when they are held by the selected financial institution prior to placement with reciprocal institutions or upon maturity.

(e) The pooled money investment board shall establish procedures for administering reciprocal deposit programs in its investment policies, as authorized by K.S.A. 75-4232, and amendments thereto.

Sec. 10. K.S.A. 79-1109 is hereby amended to read as follows: 79-1109. (a) As used in

this act, "net income" ~~shall mean~~ means the Kansas taxable income of corporations as defined in K.S.A. 79-32,138, and amendments thereto, determined without regard to the provisions of K.S.A. 79-32,139, and amendments thereto, and the provisions of ~~paragraph (xiv) of subsection (e) of K.S.A. 79-32,117(c)(xiv)~~, and amendments thereto, plus income received from obligations or securities of the United States or any authority, commission or instrumentality of the United States and its possessions to the extent not included in Kansas taxable income of a corporation and income received from obligations of this state or a political subdivision ~~thereof~~ which of this state that is exempt from income tax under the laws of this state, less dividends received from stock issued by Kansas venture capital, inc. to the extent such dividends are included in the Kansas taxable income of a corporation, interest paid on time deposits or borrowed money and dividends paid on withdrawable shares of savings and loan associations to the extent not deducted in arriving at Kansas taxable income of a corporation.

(b) Savings and loan associations shall be allowed as a deduction from net income, as ~~hereinbefore~~ defined in subsection (a), a reserve established for the sole purpose of meeting or absorbing losses, in the amount of 5% of such net income determined without benefit of such deduction, but no further deduction shall be allowed for losses when actually sustained and charged against such reserve, unless such reserve shall have been fully absorbed thereby; or, in the alternative, a reasonable addition to a reserve for losses based on past experience, under such rules and regulations as the secretary of revenue may prescribe.

(c) For all taxable years commencing after December 31, 2021, national banking associations, state banks, trust companies and savings and loan associations shall be allowed as a deduction from net income, as defined in subsection (a), the net interest income received from

qualified agricultural real estate loans attributed to Kansas and the net interest income received from single family residence loans attributed to Kansas to the extent such interest is included in the Kansas taxable income of a corporation. As used in this subsection:

(1) "Interest" means interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence:

(2) "qualified agricultural real estate" means real property that is substantially used for the production of one or more agricultural products:

(3) "single family residence" means a residence that:

(A) Is the principal residence of its occupant:

(B) is located in Kansas, in a rural area as defined by the United States department of agriculture that is not within a metropolitan statistical area and has a population of 2,500 or less as determined by the most recent census for which data is available; and

(C) is purchased or improved with the proceeds of the loan;

(4) "net interest income received from qualified agricultural real estate loans attributed to Kansas" means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company or savings and loan association without regard to this deduction; and

(5) "net interest income received from single family residence loans attributed to Kansas" means the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking

association, state bank, trust company or savings and loan association without regard to this deduction.

Sec. 11. K.S.A. 75-4237 and 79-1109 and K.S.A. 2019 Supp. 17-2205 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.