

## HOUSE BILL No. 2254

By Representative Hodge

2-12

1 AN ACT concerning financial institutions; relating to the state banking  
2 code; pertaining to loans and borrowing; requiring banks to make a  
3 minimum amount of subprime loans; amending K.S.A. 2018 Supp. 9-  
4 1104 and repealing the existing section.

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

7 Section 1. K.S.A. 2018 Supp. 9-1104 is hereby amended to read as  
8 follows: 9-1104. (a) *Definitions.* As used in this section:

9 (1) "Borrower" means an individual, sole proprietorship, partnership,  
10 joint venture, association, trust, estate, business trust, corporation, limited  
11 liability company, not-for-profit corporation, state government of the  
12 United States or a United States government unit or agency,  
13 instrumentality or political subdivision thereof or any similar entity or  
14 organization.

15 (2) "Capital" means the total of capital stock, surplus, undivided  
16 profits, 100% of the allowance for loan and lease loss, capital notes and  
17 debentures and reserve for contingencies. Intangibles, such as goodwill,  
18 shall not be included in the definition of capital when determining lending  
19 limits.

20 (3) "Loan" means:

21 (A) A bank's direct or indirect advance of funds to or on behalf of a  
22 borrower based on an obligation of the borrower to repay the funds;

23 (B) a contractual commitment to advance funds;

24 (C) an overdraft;

25 (D) loans that have been charged off the bank's books in whole or in  
26 part, unless the loan is unenforceable by reason of:

27 (i) Discharge in bankruptcy;

28 (ii) expiration of the statute of limitations;

29 (iii) judicial decision; or

30 (iv) the bank's forgiveness of the debt;

31 (E) any credit exposure to a borrower arising from a derivative  
32 transaction, repurchase agreement, reverse repurchase agreement,  
33 securities lending transaction or securities borrowing transaction between  
34 a bank and that borrower.

35 (4) "Derivative transaction" means any transaction that is a contract,  
36 agreement, swap, warrant, note or option that is based in whole, or in part,

1 on the value of any interest in, or any quantitative measure or the  
2 occurrence of any event relating to, one or more commodities, securities,  
3 currencies, interest or other rates, indices or other assets.

4 (5) *"Subprime loan"* means a loan made to a borrower who has  
5 either a nonexistent credit score or a credit score of less than 620.

6 (b) *General lending limit rule.* Subject to the provisions in  
7 subsections (d), (e) and (f), loans to one borrower, including any bank  
8 officer or employee, shall not exceed 25% of a bank's capital.

9 (c) *Calculation of the lending limit.* (1) The bank's lending limit shall  
10 be calculated on the date the loan or written commitment is made. The  
11 renewal or refinancing of a loan shall not constitute a new lending limit  
12 calculation date unless new funds are advanced.

13 (2) If the bank's lending limit increases subsequent to the origination  
14 date, a bank may use the current lending limit to determine compliance  
15 when advancing funds. An advance of funds includes the lending of  
16 money or the repurchase of any portion of a participation.

17 (3) If the bank's lending limit decreases subsequent to the origination  
18 date, a bank is not prohibited from advancing on a prior commitment that  
19 was legal on the date the commitment was made.

20 (d) *Exemptions.* (1) Overnight federal funds.

21 (2) That portion of a loan which is continuously secured on a dollar  
22 for dollar basis by any of the following will be exempt from any lending  
23 limit:

24 (A) A guaranty, commitment or agreement to take over or to  
25 purchase, made by any federal reserve bank or by any department, bureau,  
26 board, commission, agency or establishment of the United States of  
27 America, including any corporation wholly owned, directly or indirectly  
28 by the United States;

29 (B) a perfected interest in a segregated deposit account in the lending  
30 bank. In the case of a deposit which may be withdrawn in whole or in part,  
31 the bank shall establish written internal procedures to prevent the release  
32 of the deposit;

33 (C) a bonded warehouse receipt issued to the borrower by some other  
34 person;

35 (D) treasury bills, certificates of indebtedness or bonds or notes of, or  
36 fully guaranteed by, the United States of America or instrumentalities or  
37 agencies thereof;

38 (E) general obligation bonds or notes of the state of Kansas or any  
39 other state in the United States of America;

40 (F) general obligation bonds or notes of any Kansas municipality or  
41 quasi-municipality; or

42 (G) a perfected interest in a repurchase agreement of United States  
43 government securities with the lending bank.

1 (e) *Special rules.* (1) The total liability of any borrower may exceed  
2 the general 25% limit by up to an additional 10% of the bank's capital. To  
3 qualify for this expanded limit:

4 (A) The bank shall have as collateral a recorded first lien or liens on  
5 real estate securing a portion of the borrower's total liability equal to at  
6 least the amount by which the total liability exceeds the 25% limit;

7 (B) the appraised value of the real estate shall equal at least twice the  
8 amount by which the borrower's total liability exceeds the 25% limit; and

9 (C) a portion of the borrower's total liability, equal to at least the  
10 amount by which the total liability exceeds the 25% limit, shall amortize  
11 within 20 years by regularly scheduled installment payments.

12 (2) That portion of any loan endorsed or guaranteed by a borrower  
13 will not be added to that borrower's liability until the endorsed or  
14 guaranteed loan is past due 10 days.

15 (3) If the total liability of any shareholder owning 25% or more of  
16 any class of voting shares, officers or directors will exceed \$50,000, prior  
17 approval from the bank's board of directors shall be noted in the minutes.

18 (4) To the extent time deposits are insured by the federal deposit  
19 insurance corporation, such deposits purchased by a bank from another  
20 financial institution shall not be considered a loan to that financial  
21 institution and shall not be subject to the bank's lending limit.

22 (5) Third-party paper purchased by the bank will not be considered a  
23 loan to the seller unless and until the bank has the right under the  
24 agreement to require the seller to repurchase the paper.

25 (f) *Combination rules.*

26 (1) *General rule.* Loans to one borrower will be attributed to another  
27 borrower and the borrowers' total liability will be combined:

28 (A) When proceeds of a loan are to be used for the direct benefit of  
29 the other borrower, to the extent of the proceeds so used; or

30 (B) when a common enterprise is deemed to exist between the  
31 borrowers.

32 (2) *Direct benefit.* The proceeds of a loan to a borrower will be  
33 deemed to be used for the direct benefit of another person and will be  
34 attributed to the other person when the proceeds, or assets purchased with  
35 the proceeds, are transferred to another person, other than in a bona fide  
36 arm's length transaction where the proceeds are used to acquire property,  
37 goods or services.

38 (3) *Common enterprise.* A common enterprise will be deemed to exist  
39 and loans to separate borrowers will be aggregated:

40 (A) When the expected source of repayment for each loan or  
41 extension of credit is the same for each borrower and neither borrower has  
42 another source of income from which the loan, together with the  
43 borrower's other obligations, may be fully repaid;

1 (B) when both of the following circumstances are present:

2 (i) Loans are made to borrowers that are related directly or indirectly  
3 through common control, including where one borrower is directly or  
4 indirectly controlled by another borrower. Common control means to own,  
5 control or have the power to vote 25% or more of any class of voting  
6 securities or voting interests or to control, in any manner, the election of a  
7 majority of the directors or to have the power to exercise a controlling  
8 influence over the management or policies of another person; and

9 (ii) substantial financial interdependence exists between or among the  
10 borrowers. Substantial financial interdependence is deemed to exist when  
11 50% or more of one borrower's gross receipts or gross expenditures, on an  
12 annual basis, are derived from transactions with the other borrower. Gross  
13 receipts and expenditures include gross revenues, expenses, intercompany  
14 loans, dividends, capital contributions and similar receipts or payments; or

15 (C) when separate persons borrow from a bank to acquire a business  
16 enterprise of which those borrowers will own more than 50% of the voting  
17 securities or voting interests, in which case a common enterprise is  
18 deemed to exist between the borrowers for purposes of combining the  
19 acquisition loan.

20 (D) An employer will not be treated as a source of repayment for  
21 purposes of determining a common enterprise because of wages and  
22 salaries paid to an employee.

23 (4) *Special rules for loans to a corporate group.* (A) Loans by a bank  
24 to a borrower and the borrower's subsidiaries shall not, in the aggregate,  
25 exceed 50% of the bank's capital. At no time shall loans to any one  
26 borrower or to any one subsidiary exceed the general lending limit of 25%,  
27 except as allowed by other provisions of this section. For purposes of this  
28 paragraph, a corporation or a limited liability company is a subsidiary of a  
29 borrower if the borrower owns or beneficially owns directly or indirectly  
30 more than 50% of the voting securities or voting interests of the  
31 corporation or company.

32 (B) Loans to a borrower and a borrower's subsidiaries that do not  
33 meet the test contained in subsection (f)(4)(A) will not be combined unless  
34 either the direct benefit or the common enterprise test is met.

35 (5) *Special rules for loans to partnerships, joint ventures and*  
36 *associations.* (A) As used in this paragraph, the term "partnership" shall  
37 include a partnership, joint venture or association. The term partner shall  
38 include a partner in a partnership or a member in a joint venture or  
39 association.

40 (B) *General partner.* Loans to a partnership are considered to be  
41 loans to a partner if, by the terms of the partnership agreement, that partner  
42 is held generally liable for debts or actions of the partnership.

43 (C) *Limited partner.* If the liability of a partner is limited by the terms

1 of the partnership agreement, the amount of the partnership debt  
2 attributable to the partner is in direct proportion to that partner's limited  
3 partnership liability.

4 (D) Notwithstanding the provisions of subsections (f)(5)(B) and (f)(5)  
5 (C), if by the terms of the loan agreement the liability of any partner is  
6 different than delineated in the partnership agreement, for the purpose of  
7 attributing debt to the partner, the loan agreement shall control.

8 (E) Loans to a partner are not attributed to the partnership unless  
9 either the direct benefit or the common enterprise test is met.

10 (F) Loans to one partner are not attributed to other partners unless  
11 either the direct benefit or common enterprise test is met.

12 (G) When a loan is made to a partner to purchase an interest in a  
13 partnership, both the direct benefit and common enterprise tests are  
14 deemed to be met, and the loan is attributed to the partnership.

15 (6) Notwithstanding the provisions of this subsection, the  
16 commissioner may determine, based upon an evaluation of the facts and  
17 circumstances of a particular transaction, that a loan to one borrower may  
18 be attributed to another borrower.

19 (g) The commissioner may order a bank to correct any loan not in  
20 compliance with this section within 60 days. A violation of this section  
21 shall be deemed corrected if that portion of the borrower's liability which  
22 created the violation could be legally advanced under current lending  
23 limits.

24 *(h) Notwithstanding the provisions of this section, a bank shall*  
25 *provide subprime loans to borrowers in a total amount of at least 5% of*  
26 *such bank's capital. A bank shall not be subject to any penalties under the*  
27 *state banking code for providing subprime loans under this subsection.*

28 Sec. 2. K.S.A. 2018 Supp. 9-1104 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its  
30 publication in the statute book.