



Date: January 22, 2020

To: Chairman Rob Olson & Committee Members  
Senate Financial Institutions & Insurance Committee

From: Brad Douglas & Stephanie Mullholland  
Heartland Credit Union Association

Re: Opposition to Senate Bill 259

Chairman Olson and Committee Members,

On behalf of Kansas credit unions and the 679,000 Kansans who belong to their local credit unions, we thank you for the opportunity to speak in opposition to Senate Bill 259. Heartland Credit Union Association represents credit unions across the state - ranging from the state's oldest credit union, 1<sup>st</sup> Kansas Credit Union formed right here in Topeka in 1929, to the state's newest credit union, Catholics United, formed in 2005 in Hutchinson.

**Credit unions are not-for-profit cooperatives, like ag and electric coops.**

Credit unions were formed by Kansans on the verge of the Great Depression when for-profit banks were unwilling or unable to serve Kansas families and farmers. In order to protect their communities and their families' livelihoods, Kansans took matters into their own hands, pooling their resources to form credit unions and provide each other with affordable opportunities for saving and lending. To this day, credit unions continue to operate under the same beliefs they were founded upon:

- That every Kansan, no matter the economic status they were born into, has the right to improve their financial security and pursue their dreams;
- That Kansans know best when it comes to making financial decisions for their own families, and
- That individuals should not be penalized or discouraged from working together in a cooperative effort of "neighbors helping neighbors."

**Different corporate structure equates to different taxation.**

For generations, Kansas consumers have been well served by a system that relies on both for-profit financial institutions (banks) and not-for-profit financial institutions (credit unions). Just as consumers have a choice, financial institutions have a choice to determine which corporate structure best fits their goals and their purpose. Taxation is determined by the corporate structure that they choose.

Under both federal and state law, for-profit entities fall under a different taxation structure than not-for-profit entities. This is not unique to the financial services sector.

As not-for-profit cooperatives, credit unions are subject to different taxation than for-profit banks, but credit unions are also subject to a different set of structural rules than banks. Key structural differences include:

- Credit unions return their earnings to their members (Kansas consumers) and are held highly accountable to the IRS and their membership for doing so.
- Credit unions are member-owned with each member, regardless of their economic status, having an equal vote (one member-one vote).
- Credit unions are managed by a volunteer board of directors that is elected by and from the membership. Board members' decision-making is driven by what's best for the members as a whole rather than what's most profitable for any one person because credit union board members do not derive personal financial gain from serving.
- Credit unions are prohibited from having outside investors or raising outside capital.
- Credit unions remain locally owned and operated, keeping Kansas money right here at home to be recirculated in the Kansas economy rather than being shipped out of the community or out of the state to investors who don't live, work or raise their families here.

But, that's just the beginning. Separate from corporate/taxation structure, a number of outdated market restrictions – perpetuated by the bank lobby - still exist in state and federal law. These restrictions continue to limit the ability of credit unions to do more to serve Kansas consumers. Government does not place any of these same market restrictions on banks. Banks are instead permitted to operate freely in the market.

Among the restrictions on credit unions:

- **A cap that largely keeps credit unions out of the commercial and ag market.** Federal law generally limits credit unions so they can have no more than 12.25% of their assets in commercial and ag loans.
- **Field of membership laws.** Kansas law limits the communities where credit unions can be located and the number of consumers they can serve.
- **A state ban on public funds.** Kansas law currently prohibits local taxpayers from shopping for the best deal by banning cities, counties, school districts and other public entities from depositing their local tax dollars in their local credit union. This allows Kansas banks to control 100% of the public funds market without competition.

### SEE ATTACHMENT 1 FOR COMPARISON CHART OF FOR-PROFIT VS. NOT-FOR-PROFIT STRUCTURES

In October, a Special Committee on Financial Institutions & Insurance was convened to do a thorough analysis of two bills, Senate Bill 238 and Senate Bill 239, written and introduced by the bank lobby. As was presented to this committee by the Kansas Legislative Research Department, the Special Committee voted to make no recommendation on SB 238 and to not recommend SB 239. Today, you are being asked to consider Senate Bill 259, a third bill written and introduced by the bank lobby, which mirrors Senate Bill 238 (the bill that the Special Committee made no recommendation to advance).

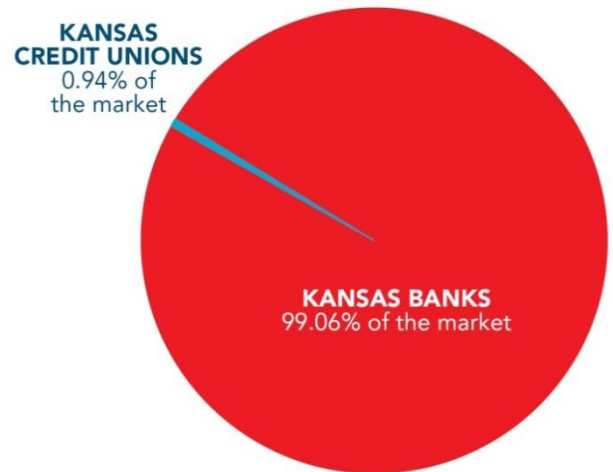
The overarching questions we ask you to consider are why? And, to what end?

- Why: Is there a problem in the market that necessitates a change?
- To what end: Who benefits and who gets harmed by this legislation?

## Why: Is there a problem in the market that would necessitate a policy change?

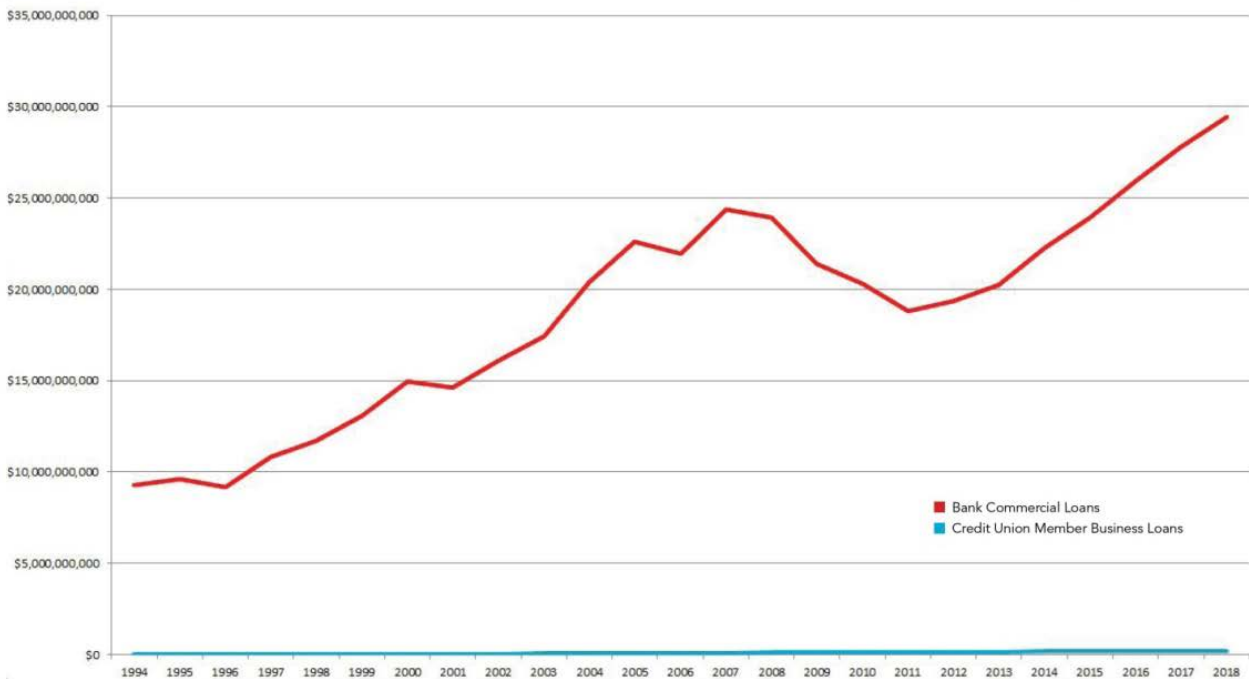
The bank lobby wants you to believe that credit unions enjoy preferential tax treatment and are an unfair threat to them in the commercial and ag loan market. If credit unions had preferential treatment or were the threat, wouldn't we be gaining charters or growing market share?

- **Banks control 99% of the commercial market in Kansas.** Kansas banks own roughly 99% of the commercial market, while credit unions hold less than 1% of the commercial and ag market. With federal restrictions that limit the ability of credit unions to do commercial and ag lending, the banks have a stronghold in the market. You've heard from the proponents that their proposals would somehow "save" banks in rural areas. But, it's difficult to understand how. Gaining the remaining 1% of the commercial market will not benefit rural banks, which are not located in the markets where most of these commercial loans are being made. In fact, credit unions are generally not located in market areas served by rural banks. The state's Field of Membership laws continue to leave consumers – particularly those in smaller communities - without local access to a credit union.



- **Credit union market share has not changed.** The proponents have said banks are losing commercial and ag loans to credit unions. But, the data proves otherwise. Credit unions have

### COMMERCIAL MARKET TREND IN KANSAS | 1994-2018



remained around 1% of the commercial and ag market, and around 7% of the overall market for decades. This graph indicates the growth of bank-issued commercial loans since 1994 (red line) compared to credit union member business loans (blue line) over that same time. If there were a trend of banks losing commercial and ag loans to credit unions, wouldn't the credit union market share have changed? Moreover, the average commercial loan written by a Kansas credit union is \$100,329 and the average ag loan originated by credit unions this year is \$29,377 – not the loan sizes banks have shown much interest in.

- **All indications show that Kansas banks are not being harmed.** This proposal is being put before you as banks continue to dominate the market on all fronts:
  - According to the FDIC, banks continue to see record profits. The data shows Kansas banks have experienced five consecutive years of increased profits, increased assets, increased loans and increased deposits. That's great for them, but it is further indication that credit unions and other lenders are not harming any bank's bottom line.
  - Kansas banks outnumber Kansas credit unions 3 to 1.
  - Outside of the commercial and ag market share numbers, credit unions hold 7.2% of the overall market share in Kansas based on deposits compared to 92.8% held by banks.
  - The median asset size for Kansas banks is nearly seven times greater than the median asset size for Kansas credit unions.

## **Despite these facts, the bank lobby would rather point the finger at credit unions and other not-for-profit lenders. We're not sure why.**

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Over the past few decades, Kansas - like almost every state - has seen a decline in the number of locally-owned financial institutions, including fewer credit unions. In fact, Kansas has lost 244 credit union charters, going from 322 credit unions in 1969 to just 78 credit unions today. The primary reason for charter loss rests with heavy-handed regulatory burdens at the federal level and a changing financial marketplace, both of which continue to increase costs for credit unions and other small financial institutions:

Dodd-Frank and other one-size-fits-all regulations cost Kansas credit union members \$44.1 million each year to comply with federal regulatory burdens that came about because of missteps by banks, not credit unions. In fact, credit unions have never caused a financial crisis and have never needed a government bailout for irresponsible lending practices.

However, credit unions – because they are owned by Kansans – remain resilient. In the wake of increased regulatory costs, credit unions have focused on finding greater efficiencies. In some instances, that has resulted in one or more small credit unions opting to band together, thereby becoming a larger credit union, in order to pool their resources and protect consumer access to affordable financial services. While the bank lobby takes issue with these credit unions that have banded together, the truth is these credit unions remain as committed as ever to their not-for-profit purpose and are held highly accountable to that mission.

Credit unions - having remained around 1% of the commercial & ag market for decades, having lost charters alongside other financial institutions, and having been placed on the hook for millions of dollars a year in added regulatory costs - are not to blame for any bank consolidations.

## To what end: Who benefits and who gets harmed by this legislation?

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Senate Bill 259 has been billed as a way to “level the playing field” and benefit consumers. Below are factors to consider in how these proposals would ultimately impact consumers, the state’s financial market, the state budget and Kansas precedent regarding for-profit and not-for-profit taxation.

- 1. Unaccountable to consumers or lawmakers: SB 259 provides no assurances that consumers will benefit.** Unlike other for-profit entities in the state, Kansas banks are exempt from state income tax. The majority of banks in Kansas are also exempt from federal income tax by claiming the Subchapter S tax exemption. **Though one of the proponents’ arguments is that credit unions receive “preferential tax treatment,” the truth is Kansas banks receive 17 times more in tax exemptions than Kansas credit unions do.**

Last year alone, Kansas banks were granted more than \$134.1 million in state and federal tax breaks (\$27.6 million of that is state exemptions) yet there is no evidence that Kansas consumers benefitted from any of those tax breaks through lower loan rates or better access to credit. Why would this time be any different? SB 259 does not hold banks accountable for returning their profits to consumers, risking that additional tax breaks for banks would continue to be shipped out of the community and into their investors’ pockets. If state government is going to further subsidize for-profit banks, what’s the assurance for consumers and for lawmakers that there is a return on that investment?

Conversely, credit unions are held highly accountable for generating a return on investment for consumers. Credit unions received roughly \$7.6 million in state and federal tax exemptions last year (\$2.6 million of that is state exemptions) and, in turn, returned more than \$132 million to Kansas consumers in the form of lower loan rates and better access to credit.

- 2. Un-levels the playing field: SB 259 creates a double standard for banks.** The proposal before you in Senate Bill 259 would create a double standard in the state’s financial sector, granting for-profit banks a not-for-profit tax exemption in certain markets without requiring them to operate as not-for-profits. This would put credit unions at a further disadvantage in the market, subjecting them to a separate set of structural rules and market restrictions that banks are not subject to. The current system already gives banks an upper-hand, which is evident in their 99% share of the commercial market and 92% share of the overall market. SB 259 would give banks more of an upper-hand with no discernable benefit for the consumer.
- 3. Undoing state precedent: What does SB 259 mean for other for-profits, other not-for-profits and the state budget?** SB 259 has implications beyond the financial services industry, creating a new precedent in Kansas tax policy whereby for-profit corporations are granted not-for-profit tax benefits.
  - What will other for-profit businesses that also seek to serve our rural communities say if one type of for-profit business (including the big banks like Bank of America and Wells Fargo) is further exempted from taxes while other local for-profit businesses – like the local grocery store, the diner, the mom-and-pop shops on Main Street - are not?
  - What’s the message sent to not-for-profits in the state if for-profit businesses are granted not-for-profit tax benefits without having to operate as not-for-profits?

- With an unknown fiscal note, how will SB 259 impact state revenues? Which programs will be cut or which taxpayers will be asked to pay more if \$30 million+ in reduced revenues is shifted elsewhere?

**Options already exist in the market. Kansas banks have the option to choose not-for-profit tax treatment. Instead, they are asking for a double standard and fighting to keep credit unions from serving more consumers.**

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A market solution already exists for banks that would prefer a not-for-profit tax structure over a for-profit tax structure. Under current law, banks may convert to a not-for-profit credit union charter at any time and return their profits to Kansas consumers like credit unions do. We haven't seen any banks do that. Instead, we are seeing this bill which is an attempt to cherry-pick the parameters and un-level the playing field by subjecting banks to a not-for-profit taxation structure without subjecting them to any of the same rules and regulations not-for-profit credit unions must follow.

Meanwhile, the bank lobby has pushed for decades to restrict other lenders, like credit unions, from being able to serve consumers, particularly those in rural communities. Credit unions would like to do more to serve small businesses, ag producers, and communities that lack consumer choice. However, state and federal laws restrict us from being able to operate in a free market, which ultimately harms consumers and limits competition.

In closing, we do not fault any entity for seeking a tax cut. We simply ask that it not be done in a way – as proposed in SB 259 – that would create a double standard or unlevel the playing field for everyone else in the market. We respectfully ask the committee to reject SB 259.

Thank you for your time, your service and your thoughtful consideration. I would be happy to stand for questions at the appropriate time.