

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 315**

As Recommended by House Committee on
Financial Institutions

Brief*

House Sub. for SB 315 would amend several provisions in the Banking Code, including provisions in the Kansas Money Transmitter Act to revise and update certain terms, establish an adjustable fee schedule, regulate unlicensed activity, update the acts subject to disciplinary action by the State Bank Commissioner (the Commissioner), and authorize the fingerprinting and completion of a criminal background check for persons related to an application for a money transmitter license; to permit the Commissioner or State Banking Board, to require fingerprinting and completion of a criminal background check for certain individuals related to filing of a notice for a proposed acquisition of a bank by a trust company, and application for a new trust company; and to allow the Commissioner to establish an equitable salary schedule for all unclassified positions (positions established by the bill), and allow the Commissioner to appoint certain positions in the unclassified service.

Updates to the Kansas Money Transmitter Act

The bill would add the definition of “agent” to the Act; the term would mean “an entity or person designated by the licensee, or by an exempt entity, to engage in the business of transmitting money on behalf of the licensee, or an exempt entity, at one or more physical locations throughout the state or through the internet.” The bill also would revise the

*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>

definition of “permissible investments” to delete certain investment types, revise current investment types, and insert additional investment types including:

- Deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposits;
- Debt obligations of a domestic federally insured depository institution;
- Any investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates such securities;
- Investment grade bonds and other legally created general obligations of a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the U.S.; and
- Obligations that a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the U.S. has unconditionally agreed to purchase, insure, or guarantee; and that bear a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

The bill also would update the definition of the term “person.”

Fee Structure

The bill would delete a provision that allowed the license application fee to be established by agency rules and regulations. Instead, the bill would allow the Commissioner to prescribe the form and manner for submission of the application. A nonrefundable fee for each agent and location, as established by the Commissioner, would be required to be

submitted with the application and would be due annually on July 1. The Commissioner would be authorized to determine the amount of the fees, in order to provide sufficient funds to meet the budget requirements associated with administering and enforcing the Act for each fiscal year. "Each agent location" would be defined by the bill to mean "each physical location within the state where money transmission is conducted, including, but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes."

A license must be renewed by filing, with the Commissioner, a complete application and nonrefundable fees at least 30 days prior to expiration of the license.

Investigatory Powers

In addition to a current authority to examine books and records of persons operating in accordance with the Act, the bill would grant the Commissioner the authority, for the purposes of investigation, examination, or other proceeding under the Act, to administer oaths, subpoena witnesses and documents, take evidence, and require the production of any document that is determined to be relevant to the inquiry.

Enforcement Authority; Violations of the Act; Unlicensed Activity

The bill also would grant the Commissioner the power to issue an order to address any violation of the Act by:

- Assessing a fine against any person who violates this act, or rules and regulations adopted thereto, in an amount not to exceed \$5,000 per violation;
- Assessing the agency's operating costs and expenses for investigating and enforcing this act;

- Requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation;
- Barring the person from future application for licensure pursuant to the Act; and
- Requiring such affirmative action as in the judgment of the Commissioner which will carry out the purposes of this act.

The Commissioner would be permitted to enter into a consent order at any time with a person to resolve a matter arising under this act, rules and regulations adopted thereto, or an order issued pursuant to this act.

The bill also would allow the Commissioner to bring an action for injunctive relief to enjoin a violation (or a likely violation of the Act) or enforce compliance, regardless of whether or not criminal proceedings have been instituted. Any person engaging in activities that are regulated and require licensure under the Act would be considered to have consented to the jurisdiction of the courts of this state for all actions arising under the Act.

Disciplinary Action; License Revocation

The bill would expand the list of prohibited actions under the Act that could result in license revocation to include having:

- Filed a document or statement falsely representing or omitting a material fact;
- Concealed a fact or a condition exists which would clearly have justified the Commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for license was made;

- Engaged in any transaction, practice, or business conduct that is fraudulent and deceptive in connection with the business of money transmission;
- Advertised, displayed, broadcast, or televised any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for the transmission of money;
- Failed to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the Commissioner the licensee's compliance with the provisions of the Act; or
- Been the subject of any disciplinary action by this or any other state or federal agency.

The list of other prohibited acts also would include instances where a final judgment has been entered against the person in a civil action and the Commissioner finds the conduct (subject of the judgment) indicates it would be contrary to the public interest to permit the person to be licensed or in instances where the person has violated any order issued by the Commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission.

Examination Reports

The bill would permit the Commissioner to accept an examination report or investigation report from another state or federal licensing agency, in which the accepted report is an official report of the Commissioner. Acceptance of the report, however, would not waive any fee required by this act.

Technical Corrections; Reorganization

The bill would make several technical amendments, including the reorganization of provisions in the existing Act.

Fingerprinting and Criminal History Record Checks of Certain Money Transmitters and Certain Trust Company Applicants

The bill would amend the Kansas Money Transmitter Act to permit the Bank Commissioner to require fingerprinting of any individual, officer, director, partner, member, shareholder, or any other person related to the application deemed necessary by the Commissioner. The bill would exempt applicants who are a publicly traded corporation or a subsidiary of a publicly traded corporation from the fingerprint check.

The bill also would allow, in instances where notice is given for the acquisition of a bank by a trust company, the Commissioner the authority (permissive) to require fingerprinting of any proposed officer, director, shareholder, or any other person deemed necessary by the Commissioner.

The bill would permit the State Banking Board to require fingerprinting of any officer, director, incorporator, or any other person of the proposed trust company related to the application deemed necessary by the Board.

The bill would allow the submission of an applicant's fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The fingerprints would be used for the purposes of identifying the person and determining whether the person has a record of arrests and convictions in Kansas or other jurisdictions. The Commissioner or Board would be permitted to use this information for the purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person, or in the case of an applicant company, the persons

associated with the applicant. The bill would require that all costs associated with the fingerprinting and criminal background checks be paid by the applicant or the parties to the application.

Unclassified Service; Salary Schedule - Office of the State Bank Commissioner

Specifically, the bill would add attorneys, officers, and employees of the Office of the State Bank Commissioner to the list of employees in the unclassified service not subject to the approval of the Governor. The bill also would grant the Commissioner authority to appoint certain positions in the unclassified service, subject to appropriations. Those positions include case managers, examiners, and a business manager within the Office of the State Bank Commissioner. Under current law, the Commissioner only is allowed to appoint regional managers and financial examiner administrators.

The bill also would allow the Commissioner to establish an equitable salary schedule for all unclassified positions. The average of the salaries established by the Commissioner, however, would not be permitted to exceed the average compensation of corresponding state regulatory positions in similar geographic areas. Under the bill, the salary schedule must be reported to the state Banking Board on an annual basis.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The House Committee on Financial Institutions recommended a substitute bill to incorporate the provisions of SB 315, as amended by the Senate Committee on Financial Institutions and Insurance, and further amended by the House Committee; Sub. for SB 64, as recommended by the

Senate Committee, and further amended by the House Committee; and SB 372, as amended by the Senate Committee and further amended by the House Committee.

The House Committee amended SB 315 to clarify the compensation provisions for unclassified positions established by the equitable salary schedule. The House Committee also amended Sub. for SB 64 to conform the amendment to language used in other similar bills and an amendment suggested by the Kansas Bureau of Investigation. The creation of the substitute bill also updated the publication date from publication in statute to publication in the *Kansas Register*, for provisions associated with fingerprinting and criminal history record checks (Sub. for SB 64) and updates to the Kansas Money Transmitter Act (SB 372).

SB 315 was introduced by the Office of the State Bank Commissioner (OSBC). The Bank Commissioner testified the agency has tried unsuccessfully for many years through the current classified system to increase and sustain the salary levels of its examination staff at a competitive and reasonable level. The agency, however, continues to fall further behind in its compensation for these individuals which has resulted in the loss of some experienced examiners. The Commissioner outlined results from a survey conducted by the OSBC of state and federal financial regulatory agencies to determine compensation for those agencies' experienced examiners. The Commissioner also stated any movement from the classified service to the unclassified service by existing employees would be strictly voluntary. A representative of the Kansas Bankers Association appeared in support of the bill, stating this change is warranted to ensure the retention of experienced bank examiners. A member of the State Banking Board also provided comments in support of the bill at the Senate Committee hearing, noting the need for examiners who have local experience and knowledge of local conditions.

The Senate Committee on Financial Institutions and

Insurance recommended an amendment to require reporting of the salary schedule to the State Banking Board on annual basis.

Sub. for SB 64. The Senate Committee on Financial Institutions and Insurance recommended the adoption of a substitute bill. The substitute bill incorporates some provisions of the bill, as introduced, with the following exceptions: deletes fingerprinting and criminal background check requirements on applicants for a new bank charter or applicants acquiring a bank or bank holding company and inserts an amendment to exempt applicants who are publicly traded corporations from the requirements for money transmitters. The Senate Committee deleted "shareholder" from the list of individuals subject to the fingerprint check in the provision applicable to new trust company applicants and also made technical corrections to the submitted balloon amendment.

The bill was introduced at the request of the Office of the State Bank Commissioner (OSBC) whose representative indicated at a 2011 Senate Committee hearing that the Commissioner or State Banking Board, prior to acting on certain applications (specified in the bill), is required to conduct a thorough review of an applicant's character and qualifications, their general business experience, activities and affiliations, their financial standing, any legal proceedings of which the applicant is a party to, and any criminal indictments or convictions. Allowing the agency the ability to perform fingerprint checks, on an as-needed basis, the representative continued, would enhance the agency's ability to meet the statutory requirements. The representative also noted that the Kansas Bureau of Investigation has advised the agency that in order to do a complete check of all criminal records throughout the United States, the agency would need to access the NCIC (National Crime Information Center) database and that requires individuals to be fingerprinted. A representative of the American Express Corporation offered neutral testimony to the bill stating that the fingerprinting requirements are not needed for publicly traded corporations

under the federal securities law enforced by the U.S. Securities and Exchange Commission (these corporations are subject to Regulation S-K, 17 CFR Part 229). Other states with fingerprinting requirements, the representative noted, have exempted publicly traded corporations for many years and there have been no issues. There were no opponents at the time of the Senate Committee hearing.

Following the conclusion of discussion on the bill, the Senate Committee on Financial Institutions requested the Legislative Coordinating Council approve an interim study of the fingerprinting and criminal history record checks in the bill and another bill in the Committee (amendments to SB 71). The topic was approved and assigned to the Special Committee on Financial Institutions and Insurance. The Special Committee recommended the Senate Committee schedule a hearing on SB 64 (including the amendments submitted by the OSBC and the amendment to exclude publicly traded corporations and their subsidiaries from fingerprinting and background checks) at a date that would allow time for consideration during the 2012 Session by the House Financial Institutions Committee. The Senate Committee held a hearing on the bill. The Deputy Bank Commissioner submitted an amendment to the bill that would remove the requirements associated with fingerprinting and criminal background checks from the bill and insert an amendment discussed during the 2011 hearing and interim. The official indicated that the agency would work with the Conference of State Bank Supervisors to facilitate dialogue on the federal level regarding the sharing of fingerprint results obtained for applications filed with the federal banking agencies. Written testimony in support of the bill was submitted by the Money Services Round Table. Representatives of the Community Bankers Association and the Kansas Bankers Association (KBA) submitted written testimony neutral to the bill. The KBA representative indicated that the association was now neutral on the bill because the initial objections to the bill have been removed; the KBA would oppose any efforts to reinstate a fingerprint requirement for banks in the bill.

SB 372 was introduced at the request of the Office of the State Bank Commissioner. The Deputy Bank Commissioner indicated the agency currently licenses 61 money transmitter companies who conduct business through 5,955 agents; over time, the number of money transmitter companies has increased, and the nature of money services business has changed. The increase in the amount of money transferred out of the country, for example, has led to higher scrutiny for compliance with the Bank Secrecy Act and requirements from the Financial Crimes Enforcement Network (FinCEN). The representative noted the agency strives to keep up with industry changes and staff has reviewed other states' laws, including the model act by the Money Transmitters Regulatory Association, and the Uniform Money Services Act drafted by the National Conference of Commissioners on Uniform Law. Based on this review, the agency requested the amendments to the Act. Written testimony in support of the bill was submitted by the Money Services Round Table (TMRST), an organization representing large, national non-bank money transmitters. TMRST's statement indicated that, on balance, the proposed amendments to existing law provide a needed update consistent with provisions in transmitter licensing laws in other states. TMRST believes these changes, particularly those that deal with additional powers for the OSBC to take action against those that violate the law, are necessary to protect the public interest. There were no opponents to the bill at the time of the Senate Committee hearing.

The Senate Financial Institutions and Insurance Committee recommended an amendment to specify when, after notice and opportunity for a hearing, the Commissioner is permitted to issue an order. Similar requirements are found in existing law (the Commissioner's ability to revoke a license). A technical amendment also was made to the bill's title.

The fiscal note prepared by the Division of the Budget on SB 315, as introduced, states that the Office of the State Bank Commissioner indicates that the bill would allow the

agency to increase expenditures on salaries and wages by \$122,351 in FY 2012 and by \$554,067 in FY 2013. The agency indicates that the additional salaries and wages will allow it to retain experienced examination staff, attract qualified candidates, and address significant salary gaps that exist between current salary levels and those of other financial regulatory agencies. The fiscal note continues, stating that *The FY 2013 Governor's Budget Report* includes additional expenditures for salaries and wages in the Office of the State Bank Commissioner's budget to allow the agency to reduce employee turnover and to retain its experienced examination staff by providing more competitive salaries and wages.

The fiscal note prepared prior to the 2011 hearing on SB 64, as introduced, states the Office of the State Bank Commissioner indicates that the bill would have no fiscal effect on its operations. The agency indicates it would require less than ten applicants per year to submit to fingerprinting and criminal background checks (the bill requires applicants to pay all associated costs). The Kansas Bureau of Investigation indicates the fingerprinting and criminal background checks would be performed by existing staff and that the fees collected would be negligible and would be used to offset the costs associated with completing the criminal background checks. Any fiscal effect associated with the bill is not reflected in *The FY 2012 Governor's Budget Report*.

The fiscal note on SB 372, as introduced, states the Office of the State Bank Commissioner indicates the bill would increase revenues to the State Bank Commissioner Fee Fund by \$40,670 in FY 2013. Under current law, the agency indicates it will collect approximately \$64,330 in application fees from money transmitters in FY 2013 and these fees are deposited in the State Bank Commissioner Fee Fund. However, the agency indicates the costs associated with enforcing the Money Transmitter Act are estimated to be \$105,000 for salaries and wages, travel costs, office space, equipment, and supplies. The bill would allow the agency to collect adequate fees to offset the costs

of administering and enforcing the requirements of the Money Transmitter Act. The agency is unable to provide an estimate of the amount of additional revenue that would be generated from the new authority to issue fines; however, the amount of additional revenue is expected to be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2013 Governor's Budget Report*.