

SENATE BILL No. 139

AN ACT concerning money transmitters; amending K.S.A. 2012 Supp. 9-508, 9-509, 9-510, 9-511, 9-513, 9-513c and 9-513d and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 9-508 is hereby amended to read as follows: 9-508. As used in this act:

(a) “Agent” means ~~an entity or~~ either a person receiving funds from a Kansas resident and forwarding such funds to a licensee to effectuate money transmission or a person designated by the licensee, ~~or by an exempt entity~~, to otherwise engage in the business of transmitting money transmission on behalf of the licensee, ~~or an exempt entity~~, at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person’s own behalf;

(b) “commissioner” means the state bank commissioner;

(c) “electronic instrument” means a card or other tangible object for the transmission or payment of money, including a ~~stored value prepaid access~~ card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(d) “licensee” means a person licensed under this act;

(e) “nationwide multi-state licensing system and registry” means a licensing system developed and maintained by the conference of state bank supervisors, or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission;

(f) “monetary value” means a medium of exchange, whether or not redeemable in money;

~~(e)~~(g) “money transmission” means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means, except that money transmission does not include currency exchange where no transmission of money occurs;

~~(f)~~(h) “outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any money order or instrument issued by the licensee which has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee;

~~(g)~~(i) “payment instrument” means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;

~~(h)~~(j) “permissible investments” means:

(1) Cash;

(2) deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposit;

(3) debt obligations of a domestic federally insured depository institution;

(4) any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) 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 United States;

(6) obligations that a state, an agency or political subdivision of a state, the United States or an instrumentality of the United States 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;

(7) shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds pri-

marily composed of such securities or a fund composed of one or more permissible investments as set forth herein;

(8) receivables which are due to a licensee ~~from such licensee's agents pursuant to a contract~~ *related to money transmission*, which are not past due or doubtful of collection and which do not exceed in the aggregate 20% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto; or

(9) any other investment or security device approved by the commissioner;

~~(i)~~(k) "person" means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise; ~~and~~

~~(j)~~(l) ~~"stored value" means monetary value that is evidenced by an electronic record.~~ "resident" means any natural person or business entity located in this state; and

(m) "tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property and goodwill.

Sec. 2. K.S.A. 2012 Supp. 9-509 is hereby amended to read as follows: 9-509. (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person obtains a license from the commissioner.

(b) (1) An application for a license shall be submitted in the form and manner prescribed by the commissioner. The application shall be accompanied by nonrefundable fees established by the commissioner for the license and each agent location. ~~Such fees shall be due annually on July 1. At least 30 days prior to expiration of the license as reflected on the face of the license certificate, a license shall be renewed by filing with the commissioner a complete application and nonrefundable application fees at least 30 days prior to expiration of the license as reflected on the face of the license certificate. Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. Expired licenses may be reinstated through February 28 of each year by filing a reinstatement application and paying the appropriate application and late fees. The application shall be accompanied by nonrefundable fees established by the commissioner for the license and each agent location.~~

(2) *The commissioner may use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the commissioner deems appropriate. The commissioner may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commissioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in the nationwide multi-state licensing system and registry. The commissioner may report violations of the law, as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.*

(3) *An application shall be accompanied by nonrefundable fees established by the commissioner for the license and each agent location. The commissioner shall determine the amount of such fees to provide sufficient funds to meet the budget requirements of administering and enforcing the act for each fiscal year. For the purposes of this subsection, "each agent location" means 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. *Any person using the multi-state licensing system shall pay all associated costs.*

~~(2)~~(4) (A) The commissioner may require fingerprinting of any individual, officer, director, partner, member, shareholder or any other person related to the application deemed necessary by the commissioner. Such fingerprints may be submitted to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of arrests and convictions in this state or other jurisdiction.

(B) The commissioner may use information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, or in the case of an applicant company, the persons associated with the company.

(C) *For purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have with the individual states, the commissioner may use a nationwide multi-state licensing system and registry for requesting information from and distributing information to the department of justice or any governmental agency.*

(D) Whenever the commissioner requires fingerprinting, any associated costs shall be paid by the applicant or the parties to the application. If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, no fingerprint check shall be required.

~~(3)~~(5) In addition, each person submitting an application shall meet the following requirements:

(A) The *tangible* net worth of such person shall be at all times not less than \$250,000, as shown by an audited financial statement and certified to by an owner, a partner or officer of the corporation or other entity filed in the form and manner prescribed by the commissioner. *A consolidated financial statement from an applicant's holding company may be accepted by the commissioner.* The commissioner may require any person to file a statement at any other time upon request;

(B) such person shall deposit and at all times keep on deposit with the state treasurer, or a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of \$500,000 upon the basis of the impaired financial condition of a person, as evidenced by a reduction in net worth, financial losses or other relevant criteria as determined by the commissioner;

(C) in lieu of the deposit of cash or securities required by paragraph (B), such person may give a surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the commissioner and issued by a company authorized to do business in this state, which bond shall be payable to the office of the state bank commissioner and be filed with the commissioner; and

(D) such person shall submit a list to the commissioner of the names and addresses of other persons who are authorized to act as agents for transactions with Kansas residents.

(c) The deposit of cash, securities or surety bond required by this section shall be subject to:

(1) Payment to the commissioner for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person, and those for whom such person has agreed to act as agent in transmission of monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of monetary value; and

(2) payment to the commissioner for satisfaction of any expenses, fines, fees or refunds due pursuant to this act, levied by the commissioner or that become lawfully due pursuant to a final judgment or order.

(d) The aggregate liability of the surety for all breaches of the conditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon

giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

(e) (1) The commissioner shall have the authority to examine the books and records of any person operating in accordance with the provisions of this act, at such person's expense, to verify compliance with state and federal law.

(2) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.

Sec. 3. K.S.A. 2012 Supp. 9-510 is hereby amended to read as follows: 9-510. A licensee may engage in the business of money transmission at one or more locations in this state and through or by means of such agents as such ~~person licensee~~ may designate and appoint from time to time. ~~A verified list of agents shall be furnished annually to the commissioner by persons operating hereunder, on a date prescribed by the commissioner. No such agent shall be required to comply with the licensing provisions of this act subject to the following provisions:~~

(1) *No agent of a licensee shall be required to comply with the licensing provisions of this act.*

(2) *Only a licensee may designate an agent.*

(A) *No agent shall appoint a subagent.*

(B) *No person acting as an agent for an exempt entity shall be exempt from the licensing provisions of this act.*

(3) *A person accepting a consumer's funds for transmission through an exempt entity is a money transmitter and subject to the provisions of this act.*

(4) *In conjunction with filing a renewal application, each applicant shall provide in the form and manner prescribed by the commissioner a complete list of its proposed or existing agents. At the end of each calendar quarter each licensee shall provide in the form and manner prescribed by the commissioner any additions or deletions in the licensee's agents.*

(5) *A written contract between a licensee and agent shall be maintained for inspection by the commissioner upon request and the written contract must contain provisions to the following effect:*

(A) *The agent must operate in full compliance with this act and the rules and regulations adopted thereunder.*

(B) *The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee.*

(C) *A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.*

(6) *The agent may only conduct activities authorized by the licensee in the written agreement, unless the agent is also a licensee.*

(7) *A licensee may contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards. The licensee with the direct contractual relationship with the agents shall record the transactions as such licensee's own. If a shared agent sells new prepaid access cards on behalf of the licensee, then such licensee must directly contract with the agent and comply with all other requirements for designating an agent.*

Sec. 4. K.S.A. 2012 Supp. 9-511 is hereby amended to read as follows: 9-511. ~~This act shall not apply to~~ *The following persons shall be exempt from the provisions of this act:*

(a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions, ~~including agents of any of these business entities~~, organized under the laws of and subject to the supervision of this state, another state or the United States;

(2) the government of the United States and its agencies, including agents of the government and its agencies; or

(3) the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.

(b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

Sec. 5. K.S.A. 2012 Supp. 9-513 is hereby amended to read as follows: 9-513. ~~This act shall be interpreted by~~ The commissioner *shall rely on the deputy commissioner of the banking division established pursuant to K.S.A. 75-3135, and amendments thereto, and such deputy's staff to administer, interpret and enforce this act* for the purpose of protecting the citizens of this state, against financial loss, who purchase payment instruments or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.

Sec. 6. K.S.A. 2012 Supp. 9-513c is hereby amended to read as follows: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained and prepared by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

(b) (1) The commissioner shall have the authority to share supervisory information, including reports of examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(2) (A) *The requirements under any federal or state law regarding the confidentiality of any information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of confidentiality protections provided by federal and state laws.*

(B) *The provisions of this paragraph shall expire July 1, 2018, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2018.*

(c) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(d) The commissioner may accept a report of examination or investigation from another state or federal licensing agency, in which the accepted report is an official report of the commissioner. Acceptance of an examination or investigation report does not waive any fee required by this act.

(e) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(f) The provisions of subsection (a) shall expire on July 1, 2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2016.

Sec. 7. K.S.A. 2012 Supp. 9-513d is hereby amended to read as follows: 9-513d. (a) The provisions of K.S.A. 9-508 through 9-513, and amendments thereto, and K.S.A. 2012 Supp. 9-513a through ~~9-513e~~ 9-513d, and amendments thereto, shall be known as and may be cited as the Kansas money transmitter act.

(b) *The commissioner is hereby authorized to adopt rules and regulations necessary to administer and implement the Kansas money transmitter act.*

Sec. 8. K.S.A. 2012 Supp. 9-508, 9-509, 9-510, 9-511, 9-513, 9-513c and 9-513d are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.