

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2216

As Amended by Senate Committee of the Whole

Brief*

HB 2216, as amended, would make several amendments to the Kansas Money Transmitter Act (KMTA); would amend the Kansas Mortgage Business Act (KMBA) to create an exclusion for certain liens in the definition of “mortgage loan”; would amend a provision governing branch banking and authorized transactions by remote service units in the Kansas Banking Code to update the definition of “remote service units”; and would enact new law to establish the Kansas ABLE (Achieving a Better Life Experience) Savings Program.

Provisions of the bill are detailed below.

KMTA—Amendments (Sections 1-6)

The bill would make several amendments to the KMTA, including updates to the definition of “agent” and licensure requirements associated with the relationship between an agent and licensee, replacing the definition of “outstanding payment instrument” with “outstanding payment liability” to create a distinction between payment instruments and money transmission considered to be outstanding, and providing the Bank Commissioner (Commissioner) with authority to increase the required amount of surety on a licensee. Amendments to the KMTA are described below.

*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>

Definitions

The bill would update the definition of “agent” to mean “a person designated by a licensee to receive funds from a Kansas resident in order to forward such funds to the licensee to effectuate money transmission 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.”

The bill would replace the term “outstanding payment instrument” with “outstanding payment liability,” which is defined to mean:

- With respect to a payment instrument, any payment instrument issued or sold by the licensee that has been sold in the United States directly by the licensee, or any payment instrument that 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 been paid yet by or for the licensee; and
- With respect to the transmission of money or monetary value, any money or monetary value the licensee or agent of the licensee has received from a customer in the United States for transmission which has not yet been delivered to the recipient or otherwise paid by the licensee.

The bill also would amend permissible investment provisions in the KMTA to make updates consistent with the new term “outstanding payment liability.”

Surety Requirements

The bill would amend surety requirements for licensure applicants. The bill would retain the requirement that any

applicant must maintain cash or securities of at least \$200,000. Under current law, the Commissioner is permitted to increase the required cash and securities up to \$500,000. Under the bill, the Commissioner could increase this requirement for surety to a maximum of \$1,000,000. The Commissioner would be required to base this decision on the following factors: the volume of money transmission business transacted in the state, or the impaired financial condition of a licensee as evidenced by a reduction in net worth or financial losses.

Prior Approval—Appointment of Certain Agents Not Physically Located in Kansas; Exempt Entities

The bill would modify agent licensure requirements to specify a licensee must obtain prior approval from the Commissioner to designate an agent that conducts money transmission business through the internet without a physical location in Kansas. The bill also would provide that a person acting as an agent for an exempt entity or any other person accepting funds for transmission through an exempt entity is a money transmitter and subject to the KMTA.

Exemptions from KMTA Provisions

The bill would exempt certain service providers from the provisions of the KMTA. Under current law, banks, building and loan associations, savings and loan associations, savings banks or credit unions, the federal government and its agencies, and the State of Kansas and its agencies are exempted from the provisions. Service providers exempted by the bill would be those providers that:

- By written agreement with the exempt entities specified in current law (*i.e.*, banks, credit unions, governments, and agencies), provide for receipt and delivery of funds, network access, processing,

clearance, or settlement services in support of money transmission activities; and

- Allow the state or federal regulators with regulatory jurisdiction over the exempt entity to examine and inspect the applicable records, books, and transactions relating to the service provider.

The bill also would delete reference to building and loan associations in this exemption.

Additional Requirements

The bill would require audited and interim financial statements associated with the filing of an application to be prepared in accordance with the United States Generally Accepted Accounting Principles (GAAP) or in any other form accepted by the Commissioner.

The bill also would permit the Commissioner to require any person operating in accordance with the provisions of the KMTA to maintain documents and records, as necessary, to verify compliance with the Act or any other applicable state or federal law or regulation.

The bill would authorize the Commissioner to take administrative action on a licensee to modify one existing finding and create a new finding related to the refusal or failure to provide, after a reasonable time, any information necessary to approve or renew a license.

KMBA—Amendments (Section 7)

The bill would amend the KMBA to create an exclusion for certain liens in the definition of “mortgage loan.” This definition would be modified by the bill to exclude “liens of contractors” (also known as contractor’s liens), as defined in Chapter 60 of the *Kansas Statutes Annotated*.

The bill also would make technical changes, including an updated reference to the federal Truth in Lending Act.

Kansas Banking Code—ITMs (Section 8)

The bill would amend a provision governing branch banking and authorized transactions by remote service units in the Kansas Banking Code to update the definition of “remote service units” and clarify the meaning of “online” and “offline” as the terms apply to the definition. The change to the definition of “remote service units” would allow banks to operate interactive teller machines (ITMs).

Under the bill, a “remote service unit” would mean “an electronic information processing device, including associated equipment, structures, and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank or is activated by a person upon verifiable personal identification.” The bill would further specify that this term must include “online” computer terminals that may be equipped with a telephone or televideo device that allows contact with bank personnel and “offline” automated cash dispensing machines and automated teller machines.

Kansas ABLE Savings Program (New Sections 9-15)

The bill would establish the Kansas ABLE Savings Program (program), an enabling tax-deferred savings program authorized by the passage of the federal ABLE Act, for the purpose of empowering individuals with disabilities and their families to save private funds to support the individuals with disability and to provide guidelines for the maintenance of such accounts. The State Treasurer

(Treasurer) would implement and administer the program. Additional program details follow.

Definitions

Several terms would be defined in the bill, including “financial organization”; “conservator” and “guardian” (both as defined in KSA 59-3050 *et seq.*); and “qualified disability expenses,” referring to those disability expenses included in § 529A of the federal Internal Revenue Code of 1986, as amended. The additional terms that would be defined would include:

- “Account owner” would refer to the person who enters into an ABLÉ savings agreement, and who also is the designated beneficiary;
- “Designated beneficiary” would mean a Kansas resident whose “qualified disability expenses” may be paid from the account, and who must be an eligible individual at the time the account is established;
- “Eligible individual” for an account would refer to an individual entitled to benefits based on blindness or disability that occurred before such individual attained the age of 26, or an individual who filed a disability certification, to the satisfaction of the Secretary of the U.S. Treasury (Secretary), with the Secretary for such taxable year;
- “Management contract” would refer to the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program; and
- “Savings agreement” would be an agreement between the program manager or the Treasurer and the account owner.

Duties and Responsibilities of the Treasurer

The Treasurer would implement and administer the program. Duties would include making changes to the program required for the participants to receive the federal income tax benefits or treatment under § 529A, as amended; establishing methods for disbursement of funds held in accounts and for the allocation of funds for administrative costs; promulgating rules and regulations to effectuate the provisions of the program; making an annual evaluation of the program and preparing an annual report of such evaluation to be provided to the Governor, the Senate, and the House of Representatives; and notifying the Secretary when an ABLE account is opened and submitting reports concerning the program required by the Secretary.

The Treasurer would be authorized to enter into agreements with other states to either allow Kansas residents to participate in a plan operated by another state or to allow residents of other states to participate in the Kansas program.

Program Implementation

The Treasurer would be authorized to implement the program through the use of financial organizations as account depositories and managers and to solicit proposals from financial organizations to act as depositories and managers. The financial organizations submitting proposals would be required to describe the investment instruments held in accounts.

The Treasurer would be able to select more than one financial organization or investment instrument for the program. The Treasurer would be required to select the financial organization demonstrating the most advantageous combination, both to potential participants and the state, of eight factors set out in the bill.

Minimum Required Contract Terms

The Treasurer would be authorized to enter into any contracts with a financial organization needed to put into effect the provisions of the program. The bill would establish the minimum required management contract terms to be performed by the financial organization. These terms would require a financial organization to take action to ensure compliance with program requirements and actions not contrary to managing the program as a qualified ABLE program under § 529A; provide adequate records, keep accounts segregated, and provide the Treasurer with the information necessary to prepare statutorily required statements; provide the Treasurer access to the books and records of the program manager to the extent needed to determine compliance with the contract, the program, and § 529A; hold accounts for the benefit for account owners; have independent audits performed at least annually and provide the audit results to the Treasurer; provide the Treasurer with copies of all regulatory filings and reports during the term of the management contract or while holding any accounts (other than confidential filings and reports that do not become part of the program) and make available to the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except those reports that may not be disclosed under law; and ensure any description of the program in any media form is consistent with the developed marketing plan.

Authorized Actions by the Treasurer

The Treasurer would be authorized to do the following:

- Enter into any contracts necessary and proper for program implementation;
- Require an audit of the operations and financial position of the program depository and manager, if

the Treasurer has reason to be concerned about the financial position, the record-keeping practices, or the status of accounts; and

- Terminate or not renew a management agreement and, upon termination or non-renewal, take custody of accounts and seek prompt transfer of the accounts to another selected program manager or depository and into investment instruments as similar as possible to the original instruments.

The bill would allow the Treasurer, the Department for Children and Families, the Department of Health and Environment, and the Department for Aging and Disability Services to exchange data regarding eligible individuals to carry out the purpose of this act.

ABLE Account Requirements

An ABLE account would be opened by a designated beneficiary, or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract, and each beneficiary would be allowed to have only one account. A non-refundable application fee could be established by the Treasurer. The account application would be in the form prescribed by the Treasurer and contain the required information specified in the bill.

Contribution Conditions

After an ABLE savings account was opened, any person would be allowed to make contributions, subject to § 529A limitations or rules and regulations promulgated by the Secretary pursuant to this act. Only cash contributions would be permitted.

The Treasurer or program manager would be required to reject or promptly withdraw contributions in excess of the established limits, or the total contributions if:

- The value of the account is equal to or greater than the account maximum established by the Treasurer (equal to the account maximum for post-secondary education savings accounts established pursuant to KSA 75-640 *et seq.*, and amendments thereto); or
- The designated beneficiary is not an eligible individual in the current calendar year.

Account Owner Options

The bill would allow the account owner to change the designated beneficiary of an account to a member of the family of the prior designated beneficiary, according to procedures established by the Treasurer, and to transfer all or a portion of an account to another ABLE savings account for a designated beneficiary who is a member of the family as defined by § 529A. An account owner would not be allowed to use an interest in an account as a security for a loan, and any such pledge would have no force and effect.

Reporting Requirements

Any distribution from an account to any individual or for the benefit of any individual during a calendar year would have to be reported to the federal Internal Revenue Service, each account owner, and the designated beneficiary or the distributee as required by state or federal law.

The bill would require an account owner to be provided at least 4 statements each year within 30 days after the end of the 3 month period to which a statement relates. The information that would need to be included in the statements is outlined in the bill. Statements and information relating to these accounts would have to be prepared and filed as required by this act and any other state or federal law.

Separate accounting for each designated beneficiary would be required, and an annual fee could be imposed on the account owner for maintenance of an account.

Treatment of Account Funds

Moneys in an ABLE account would be exempt from attachment, execution, or garnishment per KSA 2014 Supp. 60-2308 and could be claimed by the Kansas Medicaid plan only after the death of the designated beneficiary subject to limitations imposed by the Secretary.

Obligations Not Created

The Act would not obligate the Treasurer, the state, or any agency or instrumentality of the state to guarantee the return of principal, the rate of interest or other return on any account, or the payment of interest or other return on any account for the benefit of an account owner or designated beneficiary. The Treasurer would be authorized to promulgate rules and regulations to clarify that documents used in connection with opening an account clearly indicate the account is not insured by the state and the principal deposited and the investment return are not guaranteed by the state.

Kansas ABLE Savings Program Trust and Savings Expense Funds Established

The bill would establish the Kansas ABLE Savings Program Trust Fund in the State Treasury. If the Treasurer decides to accept deposits from contributors, instead of having the deposits sent directly to the program manager, the funds would be deposited in the trust fund. All interest derived from the deposit and investment of moneys in the savings trust fund would be credited to the fund. All unexpended and unencumbered moneys in the trust fund at the end of any fiscal year would remain in the trust fund and not be credited

or transferred to the State General Fund (SGF), or to any other fund.

Additionally, the Kansas ABLE Savings Expense Fund would be established in the State Treasury, consisting of moneys received from the ABLE savings program manager, or any governmental or private grants, and any SGF appropriations for the program. All expenses incurred by the Treasurer in developing and administering the program would be payable from this expense fund.

The bill also would make technical changes.

Background

HB 2216 was introduced in the House Committee on Financial Institutions by Representative Kelly at the request of the Office of the State Bank Commissioner (OSBC).

In the House Committee on Financial Institutions, the Staff Attorney for the OSBC cited rapid changes of technology and the increasing amount of money transmission being conducted electronically and through the internet as reasons for regular updates to the KMTA. The bill would clarify the licensee-agent relationship, the conferee noted, as some newer internet companies have been exploiting the ability to appoint another entity to act on behalf of the licensee (in the more traditional relationship, a company might appoint a convenience store to act as an agent on its behalf) in order to run a separate money transmitter business and avoid licensure themselves. The inclusion of a definition for “outstanding payment liabilities” would ensure that online and other licensed entities transmitting money electronically accurately report their outstanding payments. There was no other testimony presented at the House Committee hearing.

The House Committee amendment modified a provision in the bill relating to designation of agents not physically located in the state to specify the required prior approval by

the Commissioner would apply to agents conducting money transmission business through the internet.

In the Senate Committee on Financial Institutions and Insurance, a representative of the OSBC appeared in support of the bill. Additionally, a representative for Fiserv Solutions, Inc. provided neutral testimony. The representative requested consideration of an amendment that would provide clarification of legislative intent as to whether a service provider should come under the KMTA.

The Senate Committee amendment exempted certain service providers from the provisions of the KMTA. The amendment was suggested by the parties to the bill. Additionally, the Senate Committee amendment inserted provisions relating to the KMBA (HB 2258, as recommended by House Committee) and inclusion of ITMS in the Banking Code definition of "remote service unit" (HB 2352, as recommended by House Committee).

The Senate Committee of the Whole amendment inserted provisions that would establish the Kansas ABLÉ Savings Program (HB 2100, as amended by House Committee on Children and Seniors). Further information on this bill, the House Committee hearing and action, and fiscal note is provided in the Supplemental Note for HB 2100.

According to the fiscal note prepared by the Division of the Budget on HB 2216, as introduced, the OSBC indicates the costs associated with implementing the requirements of the bill would be negligible and could be absorbed within its existing budget. Fiscal information for the provisions added by the Senate Committee amendments are detailed below.

HB 2258

HB 2258 was introduced in the House Committee on Financial Institutions by Representative Campbell on behalf of the OSBC.

In the House Committee on Financial Institutions, the Deputy Commissioner for Consumer and Mortgage Lending, OSBC, testified the bill would exempt contractors, such as companies selling siding, roofing, or water softening systems, from mortgage company and loan originator licensing requirements. Companies that place contractor's liens currently are regulated under the Uniform Consumer Credit Code and required to file a notification with the OSBC. The goal, the conferee stated, would be to prevent a company that may place a contractor's lien on a property, but does not otherwise engage in mortgage activity, from duplicative and unintended licensing requirements. There was no other testimony presented at the House Committee hearing.

In the Senate Committee on Financial Institutions and Insurance, the Deputy Commissioner for Consumer and Mortgage Lending, OSBC, testified in support of the bill. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates HB 2258 would have no fiscal effect. The agency indicates the bill has the potential to avoid duplicative regulation for companies that do not offer mortgage loans.

HB 2352

HB 2352 was introduced in the House Committee on Financial Institutions by Representative Billinger at the request of the Kansas Bankers Association (KBA). At the hearing in the House Committee on Financial Institutions, the KBA representative indicated the bill would modernize the Banking Code by recognizing ITMs in today's financial marketplace. The Office of the Comptroller of the Currency, which serves as the regulator for federal chartered banks, already recognizes this technology and federally-chartered banks are utilizing ITMs. The bill would allow state-chartered banks the option to utilize these machines. There was no other testimony presented.

In the Senate Committee on Financial Institutions and Insurance, a representative of the KBA testified in support of the bill. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates HB 2352 would require it to incorporate the changes to the Banking Code into its examination schedule of state-chartered banks. However, OSBC estimates the additional costs to incorporate these changes would have a negligible fiscal effect on its operations. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.