As Amended by Senate Committee

Session of 2017

SENATE BILL No. 21

By Committee on Financial Institutions and Insurance

1-12

AN ACT concerning financial institutions; relating to the Kansas money transmitter act; amending K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a and repealing the existing sections.

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

Section 1. K.S.A. 2016 Supp. 9-508 is hereby amended to read as follows: 9-508. As used in this act:

(a) "Agent" means 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;

(b) "commissioner" means the state bank commissioner;

(c) "control" means the power directly or indirectly to direct management or policies of a person engaged in money transmission or to vote 25% or more of any class of voting shares of a person engaged in money transmission;

(d) "electronic instrument" means a card or other tangible object for the transmission or payment of money, including a 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;

(e) "licensee" means a person licensed under this act;

(f) "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;

(g) "monetary value" means a medium of exchange, whether or not redeemable in money;

(h) "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;

(i) "outstanding payment liability" means:

(1) With respect to a payment instrument, any payment instrument
issued or sold by the licensee which 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 yet been paid by or for
the licensee; or

(2) with respect to the transmission of money or monetary value, any
money or monetary value the licensee or an 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;

(j) "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;

(k) "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
primarily composed of such securities or a fund composed of one or more
permissible investments as set forth herein;

(8) receivables that are payable to a licensee, in the ordinary course of
business, pursuant to contracts which are not past due and which do not
exceed in the aggregate 40% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past due if not remitted to the licensee within 10 business days; or
(9) any other investment or security device approved by the commissioner;
(l) "person" means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise;
(m) "resident" means any natural person or business entity located in this state; and
(n) "service provider" means any person that provides equipment or software that is used and solely controlled services as described in K.S.A. 9-511(a)(2)(A), and amendments thereto, that are used by an exempt entity or its agent to provide money transmission services to the exempt entity’s own money transmission services customers. A service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or the exempt entity’s agent; and
(o) "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. 2016 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 files an application and obtains a license from the commissioner.
(b) 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. Renewal applications received between December 1 and December 31 of each year and incomplete renewal applications as of December 1 of each year shall be assessed a late fee. Expired licenses may be reinstated through February 28, the last day of February of each year by filing a reinstatement application and paying the appropriate application and late fees.
(c) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any person engaged in money transmission through purchase, assignment, pledge or
other disposition of voting shares of such money transmitter, except with
the prior approval of the commissioner. Request for approval of the
proposed acquisition shall be made by filing a complete application
with the commissioner at least 60 days prior to the acquisition.
(d) All applications shall be submitted in the form and manner
prescribed by the commissioner. Additionally, the following shall apply to
all applications:
(1) 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.
(2) 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.
(3) (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. If
the applicant is a publicly traded corporation or a subsidiary of a publicly
traded corporation, no fingerprint check shall be required. 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, 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.

(4) Each application shall include audited financial statements for each of the two fiscal years immediately preceding the date of the application and an interim financial statement, as of a date not more than 90 days prior to the date of the filing of an application. The audited and interim financial statements shall be prepared in accordance with United States generally accepted accounting principles or in any other form or manner approved by the commissioner. Any person not in business two years prior to the filing of the application shall submit a statement in the form and manner prescribed by the commissioner sufficient to demonstrate compliance with subsection (e).

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

(1) 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;

(2) such person shall deposit and at all times keep on deposit with 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 $1,000,000 upon the basis of:

(A) The volume of money transmission business transacted in this state by such person; or

(B) the impaired financial condition of a licensee, as evidenced by a reduction in net worth or financial losses;

(3) in lieu of the deposit of cash or securities required by this
subsection, 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

(4) 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.

(f) The commissioner has the discretion to determine the
completeness of any application submitted pursuant to this act. In making
the determination, the commissioner shall take into consideration
compliance with all requirements set out in this section and any other facts
and circumstances that the commissioner deems appropriate.

(1) If the applicant fails to complete the application for a new license
or for a change of control of a license within 60 days after the
commissioner provides written notice of the incomplete application, the
application will be considered abandoned and the application fee will not
be refunded. An applicant whose application is abandoned under this
section may reapply to obtain a license.

(2) If the applicant fails to file a complete renewal application on or
before December 31 of the year, the license will be deemed to expire on
December 31 of the year.

(4) (g) 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.

(g) (h) 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.

(4) (i) (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) The commissioner may require any person operating in accordance with the provisions of this act to maintain such documents and records as necessary to verify compliance with this act, or any other applicable state or federal law or regulation.

(3) 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.

(j) Except as authorized with regard to the appointment of agents, a licensee is prohibited from transferring, assigning, allowing another person to use the licensee's license, or aiding any person who does not hold a valid license under this act in engaging in the business of money transmission.

Sec. 3. K.S.A. 2016 Supp. 9-513a is hereby amended to read as follows: 9-513a. The commissioner, after notice and an opportunity for a hearing, may deny, suspend, revoke or refuse to renew or approve a license issued pursuant to this act, or issue a cease and desist order if the commissioner finds any of the following are applicable to any person who is required to be licensed under this act or such person's agent:

(a) The financial responsibility, character, reputation, experience and general fitness of the person, such person's senior officers, directors and principal stockholders are such to warrant the belief that the business may not be operated efficiently, fairly and in the public interest;

(b) the person may be financially unable to perform such person's obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of such person's obligations related to the person's money transmission business;

(c) the person no longer meets a requirement for initial granting of a license;

(d) the person has filed with the commissioner any document or statement falsely representing or omitting a material fact;

(e) the person 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 the license was made;

(f) the person or a senior officer, director or a stockholder who owns
more than 10% of the money transmission business' outstanding stock has
been convicted of a crime involving fraud, dishonesty or deceit;
    (g) there has been entry of a federal or state administrative order
against the person for violation of any rule and regulation applicable to the
conduct of the person's money transmission business;
    (h) the person refused to provide information requested by the
commissioner or refused to permit an examination or investigation by the
commissioner;
    (i) a failure to pay to the commissioner any fee required by this act;
    (j) the person has engaged in any transaction, practice or business
conduct that is fraudulent or deceptive in connection with the business of
money transmission;
    (k) the person advertises, displays, distributes, broadcasts or televises
any false, misleading or deceptive statement or representation with regard
to rates, terms or conditions for the transmission of money;
    (l) the person fails 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;
    (m) the person has been the subject of any disciplinary action by this
or any other state or federal agency;
    (n) a final judgment has been entered against the person in a civil
action and the commissioner finds the conduct on which the judgment is
based indicates that it would be contrary to the public interest to permit
such person to be licensed;
    (o) 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; or
    (p) the person has refused or otherwise failed to provide, after a
reasonable time as determined by the commissioner, any information
necessary to approve or renew an application or license issued pursuant to
this act.
Sec. 4. K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a are hereby
repealed.
Sec. 5. This act shall take effect and be in force from and after its
publication in the statute book.