

Banking Code Amendments; Enacting the Kansas Money Transmission Act and the Kansas Earned Wage Access Services Act; HB 2560

HB 2560 repeals and replaces the Kansas Money Transmitter Act (KSA 9-508 *et seq.*) with the Kansas Money Transmission Act, enacts the Kansas Earned Wage Access Services Act, and makes several amendments to the State Banking Code.

Provisions pertaining to the enactment of the Kansas Money Transmission Act will become effective and be in force from and after January 1, 2025, and upon its publication in the statute book.

Kansas Money Transmission Act

The bill requires the State Bank Commissioner (Commissioner) to provide oversight of the electronic transmission of money. The bill also establishes a licensing and renewal process for persons licensed under the Act and penalties for violations of the Act. [*Note:* The Act is organized as follows (sections): Definitions (§ 1); Exemptions (§ 2); Implementation, Confidentiality, Supervision, and Federal Law Applicability (§ 3-7); Licensing (§ 8-11; 13-16); Acquisition of Control (§ 12; 17-18); Reporting and Records (§ 19-24); Authorized Delegates (§ 25-26); Disclosures (§ 27-31); Prudential Standards (§32-35); Enforcement (§ 36-41); Severability (§ 42)].

Definitions

The bill defines terms as used in the Act, including:

- “Money,” to mean a medium of exchange that is authorized or adopted by the United States or a foreign government. “Money” includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments;
- “Money transmission,” to mean any of the following:
 - Selling or issuing payment instruments to a person located in Kansas;
 - Selling or issuing stored value to a person located in Kansas;
 - Receiving money for transmission from a person located in Kansas; or
 - Payroll processing services.
- “Person,” to mean any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified or recognized by the Commissioner; and

- “Tangible net worth,” to mean the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with U.S. generally accepted accounting principles.

Exemptions

The bill provides a list of entities the Act does not apply to:

- An operator of a payment system to the extent that such operator provides processing, clearing, or settlement services between persons exempted under this subsection or licensees in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers;
- A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services other than money transmission provided to the payor by the payee under certain circumstances.
- A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender and the sender’s designated recipient, if the entity meets certain conditions.
- The U.S. government and any agency, bureau, department, office, or instrumentality, corporate or otherwise, thereof, including any official, employee, or agent of any such entity;
- Money transmission by the U.S. Postal Service (USPS) or by its agents;
- Any state office or officer, department, board, commission, bureau, division, authority, agency, or institution of this state, and any county, city, or other municipality;
- A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch; a corporation organized pursuant to the federal Bank Service Company Act, or a corporation organized to do foreign banking under federal law;
- Electronic funds transfer of governmental benefits for or on behalf of a federal, state, county, or governmental agency or instrumentality;
- A board of trade designated as a contract market under federal law or a person that in the ordinary course of business provides clearance and settlement services for a board of trade to the extent of the board of trade’s operation;

- A futures commission merchant registered under federal commodities law operating as such merchant;
- A person registered as a securities broker-dealer under federal or state securities law operating as such broker-dealer;
- An individual employed by a licensee, authorized delegate, or any person exempted from the Act's licensing requirements when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor;
- A person expressly appointed as a third-party service provider to or agent of a state office or officer, department, board, commission, bureau, division, authority, agency, or institution of this state, including any political subdivision thereof, and any county, city, or other municipality, solely to the extent that:
 - Such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and
 - The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent;
- A person engaging in the practice of law, bookkeeping, accounting, real estate sales, or brokerage;
- A person appointed as an agent of a payor for purposes of providing payroll processing services for which such agent would otherwise need to be licensed if:
 - There is a written agreement between the payor and the agent directed to provide payroll processing services on the payor's behalf;
 - The payor holds the agent out to employees and other payees as providing payroll processing services on the payor's behalf; and
 - The payor's obligation to a payee, including any parties entitled to receive funds via the payroll processing services provided by the agent, is not extinguished if such agent fails to remit such funds to the payee; and
- A person exempt by any rules or regulations adopted or by an order issued if the Commissioner finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this act.

The Commissioner may require that any person claiming to be exempt from licensing provide information and documentation demonstrating that such person qualifies for any claimed exemption.

Implementation—State Bank Commissioner

To carry out the purposes of the Act, the Commissioner could:

- Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations to improve efficiencies and reduce regulatory burden by standardizing methods or procedures and sharing resources, records, or related information;
- Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this act;
- Accept the licensing, examination, or investigation reports made by other state or federal government agencies or officials; and
- Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

The Commissioner will have the broad administrative authority to:

- Administer, interpret, and enforce this act;
- Promulgate rules and regulations necessary to implement this act; and
- Set proportionate and equitable fees and costs associated with required actions to provide sufficient funds each fiscal year to administer the Act and to achieve the purposes of this act.

Confidentiality

Except as otherwise provided, the following documents are deemed confidential and not subject to disclosure under the Kansas Open Records Act (KORA):

- All information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate; and
- All information contained in or related to an examination, investigation, operating report, or condition report prepared by, or on behalf of, or for use of the Commissioner, or financial statements, balance sheets, or authorized delegate information.

The provisions of this act providing for confidentiality of public records will expire on July 1, 2030, unless the Legislature has reviewed and reenacted such provisions in accordance with KORA prior to that date.

The Commissioner may disclose information not otherwise subject to disclosure to representatives of state or federal agencies who promise in a record to maintain the confidentiality of the information, or where the Commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with KORA.

Public Information

The bill outlines the information contained in the records of the Office of the State Bank Commissioner (OSBC) that is not confidential and may be made available publicly (e.g., name, business address, other contact information).

This section shall not be construed to prohibit the Commissioner from disclosing to the public a list of all licensees or the licensees' aggregated financial or transactional data.

Examination

The bill authorizes the Commissioner to conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this act, by any rules and regulations adopted, or by an order issued under this act as reasonably necessary or appropriate to administer and enforce the Act, regulations implementing this act, and other applicable federal law. Under this authority, the Commissioner could:

- Conduct an examination on-site or off-site as the Commissioner may reasonably require;
- Conduct an examination in conjunction with an examination conducted by representatives of other state agencies, agencies of another state, or the federal government;
- Accept and consider the examination report of another state agency, an agency of another state, or the federal government, or a report prepared by an independent accounting firm as an official report of the Commissioner; and
- Summon, examine under oath or subpoena, and require a key individual or employee of a licensee or authorized delegate to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

Provision of Records

A licensee or authorized delegate must provide the Commissioner with full and complete access to all records the Commissioner may reasonably require to conduct a complete

examination. The records will be provided at the location and in the specified format. The bill authorizes the Commissioner to utilize multistate record production standards and examination procedures when such standards would reasonably achieve these requirements.

Unless otherwise directed by the Commissioner, the licensee must pay all reasonably incurred examination costs.

Multistate Supervision

To administer and enforce the provisions of the Act and minimize the regulatory burden, the Commissioner is authorized to participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors (CSBS), money transmitter regulators associations, and affiliates and successors for all licensees that hold licenses in Kansas or other states. The bill states the actions the Commissioner may take.

The Commissioner could not waive, and nothing in the Act would constitute a waiver of, the Commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by the Act, rules and regulations adopted, or an order issued under the Act to enforce compliance with applicable state or federal law. A joint examination, investigation, or acceptance of an examination or investigative report would not be construed to waive an examination assessment provided for in this act.

Relationship to Federal Law

The bill provides that if the jurisdiction of state money transmission is conditioned on federal law, any inconsistencies between a provision of the Act and federal law governing money transmission would be governed by the applicable federal law to the extent of the inconsistency. The Commissioner may provide interpretive guidance that identifies any inconsistency between the Act and the governing federal law and the appropriate means of compliance with federal law.

License Prohibitions

A person will not be able to engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under the Act. This would not apply to a person that is:

- An authorized delegate of a person licensed under the Act acting within the scope of authority conferred by a written contract with the licensee; or
- Exempt under provisions of the Act (New Section 2) and does not engage in money transmission outside the scope of such exemption.

A license issued under the Act is not transferable or assignable.

Licensing Practices

To establish consistent licensing practices between Kansas and other states, the bill authorizes the Commissioner to:

- Implement all licensing provisions in a manner consistent with other states that have adopted the Act or multistate licensing processes; and
- Participate in nationwide protocols for licensing cooperation and coordination among state regulators, if such protocols are consistent with the Act.

The Commissioner is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System and Registry (NMLS or “registry”) or other entities designated by the NMLS to collect and maintain records, coordinate multistate licensing and supervision processes, process fees, and facilitate communication between the Commissioner, licensees, or other persons subject to the Act.

Under the bill, the Commissioner is authorized to utilize the NMLS for all aspects of licensing in accordance with the Act, including, but not limited to:

- License applications;
- Applications for acquisition of control;
- Surety bonds;
- Reporting;
- Criminal history background checks;
- Credit checks;
- Fee processing; and
- Examinations.

The Commissioner is also authorized to establish requirements or waive or modify, in whole or in part, any or all of the continuing requirements as reasonably necessary to participate in the NMLS through the adoption of any rules and regulations adopted or an order issued or the issuance of an order.

License Applications

An applicant for a license will be required to submit a completed application in a form and manner prescribed by the Commissioner. The application must contain content as set forth by rules and regulations, instruction, or procedure of the Commissioner and may be changed or updated by the Commissioner to carry out the purposes of the Act and maintain consistency with NMLS licensing standards and practices. The application must state or contain the criteria specified in the bill (e.g., legal name and trade name, list of applicant’s criminal convictions, list of applicant’s proposed authorized delegates, and Kansas locations where money transmission is proposed).

Additional information must also be provided if an applicant is a corporation, limited liability company, partnership, or other legal entity (e.g., copy of the applicant's audited financial statements and name of applicant's registered agent in Kansas).

The Commissioner is required to set a nonrefundable new application fee each year and may waive one or more requirements of application or permit an applicant to submit other information in lieu of the required information.

Requirements for Applicants

As part of any original application, the bill requires any individual in control of a licensee, any applicant in control of a licensee, and each key individual to provide certain items to the Commissioner through the NMLS. These items will include the following:

- The OSBC may require an individual to be fingerprinted and submit to a state and national criminal history record check. The bill authorizes OSBC to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for criminal history record checks, which the OSBC may use such information for purposes of verifying the identification of the individual and in the official determination of the qualifications and fitness of the individual to be issued or to maintain a license;
 - The KBI must release all records of adult convictions and nonconvictions in Kansas and adult convictions, adjudications, and nonconvictions of another state or country to the OSBC. Disclosure or use of any information received for any purpose other than provided in the bill would be a class A misdemeanor and would constitute grounds for removal from office or termination of employment; and
- A description of the individual's personal history and experience provided in a form and manner prescribed by the Commissioner to obtain the following:
 - An independent credit report from a consumer reporting agency (waived if the individual does not have a Social Security number);
 - Information related to any criminal convictions or pending charges; and
 - Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

If the individual has resided outside of the United States at any time during the ten-year period immediately preceding the individual's application, the individual will also be required to provide an investigative background report prepared by an independent search firm that complies with the search firm requirements and background report specifications in the bill.

At a minimum, the search firm will be required to demonstrate that it has sufficient knowledge and resources, employs accepted and reasonable methodologies to conduct the research, and is not affiliated with or have an interest with the individual it is researching.

The investigative background report must be provided in English and, at a minimum, contain information specified in the bill (e.g., a comprehensive credit report, criminal records information, and employment history).

Under the bill, any information required may be used by the Commissioner in making an official determination of the qualifications and fitness of the person in control or that seeks to gain control of the licensee.

Acquisition of Control

A person would be presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. The bill authorizes a person presumed to exercise a controlling influence to rebut the presumption of control if the person is a passive investor.

For purposes of determining the percentage of a person controlled by any individual, the individual's interest will be aggregated with the interest of any other immediate family member, as described in the bill, and any other person who shares the individual's home.

Application Approval; Denial; Licensure of

When an application for an original license under the Act appears to include all the items and addresses all matters that are required, the application will be deemed complete, and the Commissioner must promptly notify the applicant of the date the application is deemed complete. The Commissioner will approve or deny the application within 120 days after the completion date.

If the application has not been approved or denied within 120 days after the completion date, the application would be considered approved and the license would take effect as of the first business day after expiration of the 120-day period. The Commissioner may extend the application period for good cause.

A determination of completion by the Commissioner will not be deemed to be an assessment of the substance of the application or of the sufficiency of the information provided.

When an application is filed and considered complete under the bill, the Commissioner will be required to investigate the applicant's financial condition and responsibility, financial and business experience, and character and general fitness. The Commissioner is authorized to conduct an on-site investigation of the applicant at the applicant's expense. The Commissioner will issue a license to an applicant under the bill if the Commissioner finds that the following conditions have been fulfilled:

- The applicant has complied with the provisions of the bill related to applications; and
- The financial condition and responsibility, financial and business experience, competence, and character and general fitness of the applicant and key

individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

If an applicant avails itself or is otherwise subject to a multistate licensing process:

- The Commissioner will be authorized to accept the investigation results of a lead investigative state to satisfy the requirements of investigation if such lead investigative state has sufficient staffing, expertise, and minimum standards; or
- If Kansas is the lead investigative state, the Commissioner will be authorized to investigate the applicant utilizing the time frames established by agreement through the multistate licensing process. No such time frames will be considered noncompliant with the application period described in the bill.

The Commissioner must issue a formal written notice of the denial of a license application within 14 days of the decision to deny the application. The Commissioner must state the specific reasons for the denial of the application. An applicant whose application is denied by the Commissioner could appeal within 14 days of receiving the notice and request a hearing in accordance with the Kansas Administrative Procedure Act (KAPA) (KSA 77-501 *et seq.*).

The initial license term begins on the day the application is approved. The license will expire on December 31 of the year in which the license term began, unless the initial license date is between November 1 and December 31, in which case the initial license term will run through December 31 of the following year.

Renewal of Licenses

A license issued under the Act will be renewed annually. An annual renewal fee set by the Commissioner will be paid not more than 60 days before the license expiration. The renewal term is for one year and begins on January 1 of each year after the initial license term and expires on December 31 of the same year.

A licensee must submit a complete renewal report with the renewal fee. This report must contain a description of each material change in information submitted by the licensee in the licensee's original license application that has not been previously reported.

Renewal applications received within 30 days of the expiration of the license and incomplete applications as of 30 days prior to the expiration of the license are subject to a late fee set by the Commissioner. The Commissioner is authorized to grant an extension of the renewal date for good cause.

The Commissioner is authorized to utilize the NMLS to process license renewals, if the utilization satisfies the requirements of the bill.

Renewal applications submitted between November 1, 2024, and December 31, 2024, and considered complete pursuant to the current Kansas Money Transmitter Act requirements (KSA 9-509) will be considered complete.

Revocation of Licenses

The bill provides that if a licensee does not continue to meet the qualifications or satisfy the requirements of an applicant for a new money transmission license, the Commissioner may suspend or revoke the licensee's license in accordance with the procedures established by the Act or other applicable state law for such suspension and revocation.

An applicant for a money transmission license is required to demonstrate that it meets or will meet the requirements of the Act.

Completeness of Applications

The Commissioner is granted the discretion to determine the completeness of any application submitted pursuant to the Act. In making such a determination, the Commissioner will consider the applicant's compliance with the requirements of the Act and any other facts and circumstances the Commissioner deems appropriate.

If an 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 an incomplete application, the application will be deemed abandoned and the application fee nonrefundable. An applicant whose application is abandoned could reapply to obtain a new license.

Transfer of License Control

When any person or group of persons acting in concert is seeking to acquire control of a licensee, the bill requires the licensee to obtain the written approval of the Commissioner prior to the change of control. An individual is not deemed to acquire control of a licensee when that individual becomes a key individual in the ordinary course of business.

A person or group of persons acting in concert that seeks to acquire control of a licensee in cooperation with such licensee will submit an application prescribed by the Commissioner accompanied by a nonrefundable fee.

Upon request, the Commissioner may permit a licensee, the person, or group of persons acting in concert to submit some or all information required by the Commissioner without using the NMLS. The required application must include all required information for any new key individuals who have not previously completed the application requirements.

When an application for acquisition of control appears to include the required information, the application will be deemed complete and the Commissioner must promptly notify the applicant of the date on which the application was so deemed. The Commissioner must approve or deny the application within 60 days after the completion date.

If the application is not approved or denied within 60 days after the completion date, the application will be deemed approved and the person or group of persons acting in concert will not be prohibited from acquiring control.

The Commissioner may extend the application period for good cause.

A determination by the Commissioner that an application is complete and is accepted for processing will mean only that the application, on its face, appears to include all of the required items. A determination of completion by the Commissioner will not be deemed to be an assessment of the substance of the application or the sufficiency of the information provided.

When an application is filed and considered complete, the Commissioner will investigate the financial condition and responsibility, financial and business experience, and character and general fitness of the person or group of persons acting in concert that seek to acquire control. The Commissioner must approve an acquisition of control pursuant to the Act if the Commissioner finds that all of the following conditions have been fulfilled:

- The requirements of the Act have been met, as applicable; and
- The financial condition and responsibility, financial and business experience, competence, and character and general fitness of the person or group of persons acting in concert seeking to acquire control and the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person or group of persons acting in concert to control the licensee.

If the applicant avails itself or is otherwise subject to a multistate licensing process:

- The Commissioner is authorized to accept the investigation results of a lead investigative state for the purposes of the Act if the lead investigative state has sufficient staffing, expertise, and minimum standards; or
- If Kansas is a lead investigative state, the Commissioner is authorized to investigate the applicant pursuant to the Act and the time frames established by agreement through the multistate licensing process.

The Commissioner will issue a formal written notice of the denial of an application to acquire control within 30 days of the decision to deny the application. The Commissioner will state in the notice of denial the specific reasons for the denial. An applicant whose application is denied by the Commissioner may appeal within 14 days and request a hearing in accordance with the KAPA.

The persons to which the requirements in the Act to obtain the written approval of the Commissioner or submit an application to the Commissioner prior to change of control do not apply are outlined in the bill (e.g., persons acting as a proxy for the sole purpose of voting or acquiring control of a licensee as a personal representative, guardian, conservator, or other person appointed by a court or by operation of law).

Persons meeting requirements specified in the bill in cooperation with the licensee would notify the Commissioner within 15 days after the acquisition of control. If notice is not disapproved within 30 days after the date on which the notice was determined to be complete, the notice would be deemed approved.

Before filing an application for approval to acquire control of a licensee, a person could request in writing a determination from the Commissioner as to whether such person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the Commissioner determines that the person would not be a person in control of a licensee, the person and the proposed transaction will not be subject to requirements in the Act to obtain the written approval of the Commissioner or submit an application to the Commissioner prior to change of control.

If a multistate licensing process includes a prior determination from the Commissioner and an applicant avails itself or is otherwise subject to the multistate licensing process:

- The Commissioner is authorized to accept the control determination of a lead investigative state with sufficient staffing, expertise, and minimum standards for the purpose of prior determination from the Commissioner; or
- If Kansas is a lead investigative state, the Commissioner is authorized to investigate the applicant to make a prior determination pursuant to the Act and the time frames established by agreement through the multistate licensing process.

Replacement of Key Individual

The bill requires a licensee adding or replacing a key individual to provide:

- Notice to the Commissioner within 15 days after the effective date of the appointment of the new key individual; and
- Information as required by the bill within 45 days of the effective date of the appointment of the new key individual.

Within 90 days of the date on which the notice provided is determined to be complete, the Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interest of the public or the customers of the licensee.

A notice of disapproval must state the basis for disapproval and be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval pursuant to the KAPA within 14 days. If the notice provided is not disapproved within 90 days after the date when the notice is determined to be complete, the key individual will be considered approved.

If a multistate licensing process includes a key individual notice review and disapproval process and the licensee avails itself or is otherwise subject to the multistate license process:

- The Commissioner is authorized to accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for investigation; or

- If Kansas is a lead investigative state, the Commissioner is authorized to investigate the applicant pursuant to the Act and the time frames established by agreement through the multistate licensing process.

Report of Condition

Each licensee is required to submit a report of condition within 45 days of the end of the calendar quarter or within any extended time as the Commissioner may prescribe.

The bill requires the report of condition to include:

- Financial information at the licensee level;
- Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;
- The permissible investments report;
- Transaction destination country reporting for money received for transmission, if applicable; and
- Any other information the Commissioner reasonably requires regarding the licensee.

The bill authorizes the Commissioner to utilize the NMLS for the submission of the report and to change or update as necessary the requirements of this section to carry out the purposes of the Act and maintain consistency with NMLS.

The information required regarding transaction destination country reporting for money received for transmission would only be included in a report of condition submitted within 45 days of the end of the fourth calendar quarter.

Fiscal Year Reporting

Within 90 days after the end of each fiscal year or within any extended time prescribed by the Commissioner through rules and regulations, every licensee must file with the Commissioner:

- An audited financial statement of the licensee for the fiscal year prepared in accordance with U.S. generally accepted accounting principles; and
- Any other information the Commissioner may reasonably require.

The bill requires the audited financial statements to include a certificate of opinion of the independent certified public accountant or independent public accountant in a form and manner

determined by the Commissioner. If the certificate or opinion is qualified, the Commissioner is authorized to order the licensee to take any action as the Commissioner may find necessary to enable the accountant to remove the qualification.

Report of Authorized Delegates

Each licensee will be required to submit a report of authorized delegates within 45 days of the end of each calendar quarter. The Commissioner is authorized to utilize the NMLS for the submission of the required report if such utilization is consistent with the requirements of this section.

The bill details the minimum information that each authorized delegate must include in its annual report (e.g., company legal name, physical address, and any business conducted in other states).

Reports of Action Against the Licensee

The bill requires a licensee to file a report with the Commissioner within one business day after the licensee has reason to know of the:

- Filing of a bankruptcy or reorganization petition by or against the licensee;
- Filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors; or
- Commencement of a proceeding to revoke or suspend the licensee's license in a state or country where the licensee engages in business or is licensed.

A licensee will be required to file a report with the Commissioner within three business days after the licensee has reason to know of a felony conviction of the licensee, a key individual or person in control of the licensee, or an authorized delegate.

Reports of Money Laundering

The bill requires a licensee and an authorized delegate to file all reports required by federal currency reporting, recordkeeping, and suspicious activity reporting requirements in federal and state laws that pertain to money laundering. The bill deems a timely filing of such complete and accurate report with the appropriate agency to be in compliance with these requirements.

Maintenance of Records

Under the bill, every licensee is required to maintain certain specified records for at least three years (e.g., a record of each outstanding money transmission obligation sold; and a general ledger containing all assets, liability, capital, income, and expense accounts).

The bill allows such required records to be maintained in any form and maintained outside the state, if the records are made accessible to the Commissioner on seven business days' notice. These required records maintained by the licensee will be open to inspection by the Commissioner pursuant to provisions that detail the examination options available to the Commissioner (New Section 5).

Requirements to Conduct Business Through an Authorized Delegate

Regarding the requirements for business conducted through an authorized delegate, the bill defines "remit" to mean making direct payments of money to a licensee or the licensee's representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

The bill requires a licensee to comply with the following requirements before being authorized to conduct business through an authorized delegate or allowing a person to act as the licensee's authorized delegate:

- Adopt and update as necessary all written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;
- Enter into a written contract that complies with the contract requirements outlined in the bill; and
- Conduct a reasonable risk-based background investigation sufficient for the licensee to determine if the authorized delegate has complied and will likely comply with applicable state and federal law.

Written Contract Requirements

The bill requires the written contract required to do business through an authorized delegate to be signed by the licensee and the authorized delegate and, at a minimum, to include certain specified provisions. Such provisions will include appointing the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee and requiring the authorized delegate to agree to fully comply with all applicable state and federal laws and rules and regulations pertaining to money transmission.

Notice of Licensee's License Status

Within five business days after the suspension, revocation, surrender, or expiration of a licensee's license, a licensee must provide documentation to the Commissioner that the licensee notified the licensee's applicable authorized delegates who are in the record filed with the Commissioner of such action on the license. All applicable authorized delegates must immediately cease to provide money transmission as an authorized delegate of the licensee upon the suspension, revocation, surrender, or expiration of a licensee's license.

Funds Held in Trust by Authorized Delegate

The bill requires all money net fees received from money transmission to be held in trust by an authorized delegate for the benefit of the licensee. If an authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, the bill will require that all commingled funds and other property be considered held in trust in favor of the licensee in an amount equal to the amount of money net fees received from money transmission. An authorized delegate is prohibited from using a subdelegate to conduct money transmission.

Money Transmission on Behalf of an Unlicensed or Nonexempt Person

The bill prohibits a person from engaging in the business of money transmission on behalf of a person that is not licensed or exempt from licensing under the Act. A person that engages in such activity would be deemed to have provided money transmission to the same extent that such person were if a licensee and would be jointly and severably liable with the unlicensed or nonexempt person.

Forwarding of Money Received for Transmission

The bill requires every licensee to forward all moneys received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee reasonably believes or has a reasonable basis to believe the sender may be a victim of fraud or that a crime or violation of law or any rules and regulations has occurred, is occurring, or may occur.

If a licensee fails to forward money received for transmission in accordance with this section, the bill requires the licensee to respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law or rules and regulations.

Exceptions to the Refund of Money Received for Transmission

Within ten days of receipt of the sender's written request for a refund of all money received for transmission, the licensee is required to refund such money to the sender, unless a permissible exception under the Act exists (e.g., the money has been forwarded within ten days of the date when the money was received for transmission).

The refund request should not be construed to enable the licensee to identify the sender's name and address or telephone number or the particular transaction to be refunded if the sender has multiple outstanding transactions.

The refund exceptions will not apply to moneys received for transmission subject to federal law pertaining to the requirements for remittance transfers or pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

Receipt for Money Received for Transmission

The requirement that a receipt for money received for transmission be provided to the sender does not apply to:

- Money received for transmission subject to federal law pertaining to the requirements for remittance transfers;
- Money received for transmission that is not primarily for personal, family, or household purposes;
- Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or
- Payroll processing services.

Receipt Requirements

For purposes of the bill's receipt requirements, "receipt" is defined to mean a paper or electronic receipt. For a transaction conducted in person, the bill allows the receipt to be provided electronically if the sender requests or agrees to receive the receipt in such manner. For a transaction conducted electronically or by telephone, the bill allows the receipt to be provided electronically. The bill requires all electronic receipts to be provided in retainable form.

Every licensee or the licensee's authorized delegate will be required to provide the sender a receipt for money received for transmission. The bill establishes the information that must be contained in the receipt, including the name of the sender and designated recipient, transaction date, and unique transaction or identification number.

The bill requires the receipt to be written in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by telephone, if other than English.

State Bank Commissioner Contact Information

Every licensee or authorized delegate must include on a receipt or disclose on the licensee's website or mobile application the name of the Office of the State Bank Commissioner and a statement that the licensee's Kansas customers could contact the OSBC with questions or complaints about the licensee's money transmission services.

Payroll Processing Services

A licensee that provides payroll processing services is required to issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account and make available worker pay stubs or an equivalent statement to workers.

These provisions do not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures.

Tangible Net Worth Requirement

The bill requires every licensee to maintain at all times a tangible net worth of:

- The greater of \$100,000 or 3 percent of such licensee's total assets, up to \$100.0 million;
- 2 percent of such licensee's additional assets of \$100.0 million to \$1.0 billion; and
- 0.5 percent of such licensee's additional assets exceeding \$1.0 billion.

The bill requires the licensee's tangible net worth to be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to application requirements for a license to engage in money transmission.

Despite net worth requirements, the bill grants the Commissioner the authority to exempt any applicant or licensee, in part or in whole, from these provisions.

Security Requirement

The bill requires an applicant for a money transmission license to provide and a licensee to maintain security consisting of a surety bond in a form satisfactory to the Commissioner or, with the Commissioner's approval, a deposit instead of a bond as follows.

The following amount of security is required:

- The greater of \$200,000 or an amount equal to 100.0 percent of the licensee's average daily money transmission liability in Kansas calculated for the most recently completed three-month period, up to a maximum of \$1.0 million; or
- \$200,000, if the licensee's tangible net worth exceeds 10.0 percent of total assets.

If a licensee maintains a bond in the maximum amount provided for above, the licensee will not be required to calculate its average daily money transmission liability. The bill allows a licensee to exceed the maximum required bond amount pursuant to New Section 35, which lists the types of permissible investments a licensee may hold.

Permissible Investment Requirements

The bill requires a licensee to maintain permissible investments with a market value computed according to the U.S. generally accepted accounting principles of not less than the aggregate amount of the total of the licensee's outstanding money transmission obligations.

With the exception of the authorized permissible investments, the bill allows the Commissioner, by rules and regulations or order, to limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers not reflected in the market value of investments.

The bill authorizes the Commissioner, by rules and regulations or by order, to allow other types of investments that are of sufficient liquidity and quality to be a permissible investment. The bill also authorizes the Commissioner to participate in efforts with other state regulators to determine which other types of investments are of sufficient liquidity and quality to be a permissible investment.

Permissible Investment Held in Trust

The bill requires permissible investments, even if commingled with other assets of the licensee, to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations outlined in the bill, which include the event of insolvency and the filing of a petition by or against the licensee for receivership.

The bill prohibits permissible investments impressed with a trust to be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

Statutory trust. When a statutory trust is established in accordance with the Act or when any funds are drawn on a letter of credit, the bill requires the Commissioner to notify the applicable regulator of each state where the licensee is licensed to engage in money transmission, if any, that a trust has been established or the funds drawn on the letter of credit, as applicable. If performed pursuant to a multistate agreement or through the NMLS, the bill would deem the notice requirement satisfied. The bill deems funds drawn on a letter of credit and any other permissible investments held in trust for the benefit of the purchasers and holders

of the licensee's outstanding money transmission obligations to be held in trust for the benefit of such purchasers and holders on a *pro rata* and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in Kansas and other states, as applicable. The bill requires any statutory trust established under its provisions to be terminated when all of the licensee's outstanding money transmission obligations have been extinguished.

Types of Permissible Investments

The following investments are considered permissible:

- Cash, including demand deposits, savings deposits, and funds in accounts held for the benefit of the licensee's customers in a federally insured depository financial institution and cash equivalents, including automated clearinghouse items in transit to the licensee and automated clearinghouse items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, or debit card- or credit card-funded transmission receivables owed by any bank or money market mutual funds rated AAA by Standard & Poor or the equivalent from any eligible rating service;
- Certificates of deposit or senior debt obligations of a federally insured depository institution;
- An obligation of the United States or a commission, agency, or instrumentality of the United States, an obligation that is guaranteed fully as to principal and interest by the United States, or an obligation of a state or a governmental subdivision, agency or instrumentality of a state; and
- The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the Commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the required items listed in this section of the bill.
- With regard to the line of credit, the bill provides:
 - The required elements of the letter of credit;
 - If any notice of expiration or non-extension of a letter of credit is issued when an irrevocable letter of credit is not being extended, the procedure to be followed, licensee requirements, and action that could be taken by the Commissioner to maintain the licensee's permissible investments. The bill provides that the drawn funds would be held in trust by the Commissioner or the Commissioner's designated agent, to the extent authorized by law;

- The issuer of such letter of credit will be required to honor, at sight, a presentation made of the following required documents by the beneficiary to the issuer on or prior to the expiration date of the letter of credit:
 - The original letter of credit, including any amendments; and
 - A written statement from the beneficiary stating that any of the following events have occurred: the filing by or against the licensee of a bankruptcy or reorganization petition or a petition for receivership or the commencement of any other judicial or administrative proceeding for such licensee’s dissolution or reorganization; the seizure of assets of a licensee by a Commissioner pursuant to an emergency order on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or the beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee would maintain the required permissible investments, upon the expiration or non-extension of the letter of credit;
- The Commissioner could designate an agent to serve on the Commissioner’s behalf as beneficiary to a letter of credit if the agent and letter of credit meet requirements established by the Commissioner; and
- The Commissioner could participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including, but not limited to, services provided by the NMLS and registry and the State Regulatory Registry, LLC; and
- 100 percent of the surety bond provided for (New Section 33) that exceeds the average daily money transmission liability in Kansas.

Permissible Investments to the Extent Specified

Unless permitted by the Commissioner by rules and regulations adopted or by order issued to exceed the limit as set forth below, the bill provides that the following investments are permissible to the extent specified:

- Receivables payable to a licensee from the licensee’s authorized delegates in the ordinary course of business that are less than seven days old up to 50 percent of the aggregate value of the licensee’s total permissible investments; and
- Of the receivables permissible above, receivables payable to a licensee from a single authorized delegate in the ordinary course of business could not exceed 10 percent of the aggregate value of the licensee’s total permissible investments.

The bill permits specified investments up to 20 percent per category and up to 50 percent combined of the aggregate value of the licensee's total permissible investments, including a short-term investment of up to six months; commercial paper; and a bill, note, or debenture (each investment must bear an eligible rating).

Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions will be permissible up to 10 percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in the licensee's most recent examination and the foreign depository institution:

- Has an eligible rating;
- Is registered under the Foreign Account Tax Compliance Act;
- Is not located in any country subject to sanctions from the Office of Foreign Assets Control; and
- Is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

Process for Suspension or Revocation of a Licensee's License

After notice and an opportunity for a hearing under the KAPA, the bill authorizes the Commissioner to suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if any of the 13 violations listed occur.

In determining whether a licensee is engaging in an unsafe or unsound practice, the Commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of the Act, and the previous conduct of the person involved.

Suspension or Revocation of the Designation of an Authorized Delegate

The bill authorizes the Commissioner to issue an order suspending or revoking the designation of an authorized delegate if the Commissioner finds the authorized delegate:

- Violated the Act or any rules and regulations adopted or an order issued under the Act;
- Did not cooperate with an examination or investigation by the Commissioner;
- Engaged in fraud, intentional misrepresentation, or gross negligence;
- Is convicted of a violation of a state or federal anti-money laundering statute;

- Or, the person in control, has competence, experience, character, or general fitness that indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or
- Is engaging in an unsafe or unsound practice as determined by the Commissioner.

The bill provides what the Commissioner may consider in determining whether an authorized delegate is engaging in an unsafe or unsound practice, such as the size and condition of the authorized delegate's provision of money transmission.

An authorized delegate is permitted to apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the Commissioner in rules and regulations.

Issuance of Cease-and-desist Order

Under provisions of the bill, if the Commissioner determines that a violation of the Act, or of any rules and regulations adopted or an order issued under the Act, by a licensee, person required to be licensed, or authorized delegate is likely to cause immediate and irreparable harm to the licensee, the licensee's customers, or the public as a result of the violation or cause insolvency or significant dissipation of assets of the licensee, the Commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order will become effective upon service of the order on the licensee or authorized delegate.

The Commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the Commissioner.

An order to cease and desist would remain effective and enforceable pending the completion of an administrative proceeding pursuant to the KAPA. Additionally, an order to cease and desist would be considered a final order unless the licensee or authorized delegate requests a hearing within 14 days after the cease and desist order is issued.

Consent Orders

The bill authorizes the Commissioner to enter into a consent order at any time with a person to resolve a matter arising under the Act or any rules and regulations adopted or order issued under the Act. The bill requires a consent order to be signed by the person to whom such consent order is issued or by the person's authorized representative and indicate agreement with the terms contained in the order.

Criminal Penalties

The following actions would result in the criminal penalties listed:

- Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this act or that intentionally makes a false entry or omits a material entry in such a record would be guilty of a severity level 9 nonperson felony; and
- Any person that knowingly engages in an activity for which a license is required under the Act without being licensed under the Act and that receives more than \$500 in compensation within a 30-day period from this activity would be guilty of a severity level 9 nonperson felony. Receipt of not more than \$500 in compensation within a 30-day period from this activity would be a class A nonperson misdemeanor.

Civil Penalties

The Commissioner, as part of any summary order or consent order, is authorized to impose civil penalties (e.g., assessing the agency's operating costs and expenses for investigating and enforcing the Act and prohibiting the person from future application).

Informal Agreement

The bill authorizes the Commissioner to enter into an informal agreement at any time with a person to resolve a matter arising under the Act, rules and regulations adopted under the Act, or an order issued pursuant to the Act. Any informal agreement authorized by this subsection will be considered confidential examination material.

Adoption of an informal agreement authorized by this subsection will not be:

- Subject to the provisions of the KAPA or the Kansas Judicial Review Act;
- Considered an order or other agency action; or
- Discoverable or be admissible in evidence in any private civil action.

The provisions of this subsection providing for the confidentiality of public records will expire on July 1, 2030, unless the Legislature reviews and reenacts such provisions in accordance with KORA prior to July 1, 2030.

Penalties from an Examination Finding

The bill authorizes the Commissioner, through an examination finding, to impose the following penalties:

- Assess a fine against any licensee who violates the Act or rules and regulations adopted thereto, in an amount not to exceed \$5,000 per violation. The Commissioner may designate any fine collected pursuant to this section for consumer education; or

- Require the licensee to pay restitution for any loss arising from the violation or require the person to reimburse any profits arising from the violation.

Severability of Provisions

The provisions of the Act would be severable. If any portion of the Act is declared unconstitutional or invalid, or the application of any portion of the Act to any person or circumstance is held unconstitutional or invalid, the invalidity would not affect other portions of the Act that could be given effect without the invalid portion or application, and the applicability of such other portions of the Act to any person or circumstance would remain valid and enforceable.

Earned Wage Access Services Act

The bill also creates the Kansas Earned Wage Access Services Act and authorizes the OSBC to regulate earned wage access services providers. The bill establishes registration criteria, including annual reporting and business records requirements, as well as assigns powers and duties to the Commissioner, including examination and enforcement, to ensure compliance with the Act. [Note: “Earned Wage Access” is often abbreviated as “EWA.”]

Designation, Applicability, and Definitions

The bill designates sections 43–58 of the bill as the Kansas Earned Wage Access Services Act (EWA Act). The bill further specifies the EWA Act does not apply to a bank holding company regulated by the Federal Reserve, a depository institution regulated by a federal banking agency, or a subsidiary of either the holding company or depository institution that directly owns 25.0 percent of the common stock.

Definitions

The bill creates several definitions for terminology used in the EWA Act. Among the definitions established in the bill:

- “Consumer” means an individual who is a resident of the state;
- “Earned wage access services” means the business of providing consumer-directed wage access services or employer-integrated wage access services, or both;
- “Consumer directed wage access services” means offering or providing earned wage access services directly to consumers based on the consumer’s representations and the provider’s reasonable determination of the consumer’s earned but unpaid income;

- “Employer-integrated wage access services” means the business of delivering to consumers access to earned but unpaid income that is based on employment, income, and attendance data obtained directly or indirectly from the employer;
- “Fee” means a fee imposed by a provider for delivery or expedited delivery of proceeds to a consumer or a subscription or a membership fee imposed by a provider for a *bona fide* group of services that include EWA services; the term excludes a voluntary tip, gratuity, or donation;
- “Non-mandatory payment” means an amount paid by a consumer or an obligor to a provider that does not meet the definition of a fee;
 - An example of permissible mandatory payment would be a charge imposed by a provider for delivery or expedited delivery of proceeds to a consumer so long as the provider offers the consumer at least one option to receive proceeds at no cost to the consumer;
- “Obligor” means an employer or other person who employs a consumer or any other person who is contractually obligated to pay a consumer earned but unpaid income in exchange for a consumer’s provision of services to the employer or on behalf of the employer on an hourly, project-based, piecework, or other basis, and including where the consumer is acting as an independent contractor;
- “Person” means any individual, corporation, partnership, association, or other commercial entity; and
- “Provider” means a person who is in the business of offering earned wage access services to consumers.

The bill also creates definitions for the terms “act,” “commissioner,” “director,” “earned but unpaid income,” “member,” “Nationwide Multistate Licensing System and Registry,” “nonrecourse,” “officer,” “outstanding proceeds,” “owner,” “partner,” “principal,” “proceeds,” and “registrant.”

Registration for Persons Engaging in Earned Wage Access Services Business

The bill requires persons engaging in or willing to engage in any EWA services business with a consumer to register with the Commissioner. Such persons must submit a registration application on forms prescribed and provided by the Commissioner. The bill requires the application to include certain specified information (e.g., applicant name and business address; description of ownership interest of officers, directors, members, and other persons associated with the applicant).

Application for, Approval, and Issuance of Registration

The bill also requires the Commissioner to approve an application and issue a nontransferable and nonassignable registration to the applicant once the Commissioner receives the complete application and application fee and determines the financial responsibility, financial condition, character, qualifications, and fitness warrants a belief that the applicant's business will be conducted competently, honestly, fairly, and in accordance with applicable state and federal laws.

Registration Expiration; Renewal; Failure to Issue

The bill provides the earned wage access services registration will expire on December 31 each year. A registration will be renewed if the person files a complete renewal application with the Commissioner at least 30 calendar days prior to the registration's expiration. The bill requires the renewal application to contain all information the Commissioner requires to determine the existence and effect of any material change from the information contained in the applicant's original application, annual reports, or prior renewal applications. A nonrefundable renewal fee will also be charged.

The bill permits, if the Commissioner fails to issue a registration within 60 calendar days after a filed application is deemed complete, the applicant to make a written request for a hearing. Upon receipt of this request, the Commissioner will be required to conduct a hearing in accordance with the KAPA.

Registration Processing and Exceptions to Registration

The bill also requires the Commissioner, no later than January 1, 2025, to prescribe the form and content of an application for registration to provide EWA services.

The bill allows a person who, as of January 1, 2024, was engaged in the business of providing EWA services to continue to engage in this business until the Commissioner has processed the person's application if such person has submitted an application within three months after the Commissioner has prescribed the application's form and content and the person has complied with the EWA Act.

The bill also provides that the Act's registration requirements do not apply to individuals acting as employees or independent contractors of business entities required to register.

Surety Requirement on Applicants and Registrants

The bill requires each applicant or registrant to file with the Commissioner a surety bond in a form acceptable to the Commissioner. The surety bond must be issued by a surety or insurance company authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations. The surety bond must meet requirements specified in the bill, which include being available for the recovery of expenses, fines, and fees levied by the Commissioner and the payment of certain losses or damages and being in the amount of \$100,000.

Registration Requirements of Registered Providers

The bill requires providers registered in the state (“registrants”) to:

- Provide all proceeds on a non-recourse basis, and treat all fees and non-mandatory payments as non-recourse payment obligations;
- Develop and implement policies and procedures to respond to questions raised by consumers and address consumer complaints in an expedient manner;
- Before providing a consumer with EWA services, inform the consumer of their rights under the agreement, fully and clearly disclose all fees associated with EWA services, and clearly and conspicuously describe how the consumer may obtain proceeds at no cost to such consumer;
- Inform the consumer of any material changes to the terms and conditions of the EWA services before implementing any changes;
- Provide proceeds to a consumer via any means mutually agreed upon;
- Allow a consumer to cancel the use of the provider’s EWA services at any time, without incurring a cancellation fee or penalty imposed by the provider;
- Comply with all applicable federal, state, and local privacy and information security laws;
- Disclose certain information if a registrant solicits, charges, or receives a tip, gratuity, or other donation from a consumer (e.g., inform the consumer immediately prior to each transaction that a tip, gratuity, or other donation amount may be zero and is voluntary);
- If a registrant seeks repayment of outstanding proceeds or payment of fees or other amounts owed, in connection with EWA services from a consumer’s depository institution, including by means of electronic funds transfer, the registrant must:
 - Inform the consumer when the provider will make each attempt;
 - Comply with applicable provisions of the federal Electronic Fund Transfer Act (EFTA) [15 U.S.C. 1693 *et seq.*] and any adopted EFTA regulations; and
 - Reimburse the consumer for the full amount of any overdraft or nonsufficient funds fees imposed on a consumer by the consumer’s depository institution that were caused by the provider attempting to seek payment of any outstanding proceeds, fees, or other payments in connection with EWA services on a date before, or in an incorrect amount from, the date or amount disclosed to the consumer. (A provider would

not be subject to this reimbursement requirement with respect to payments incurred by a consumer through fraudulent or other unlawful means.)

Prohibitions and Restrictions on Registrants

The bill imposes certain restrictions and prohibitions on persons registered under the EWA Act, including:

- Prohibiting compelling or attempting to compel repayment of outstanding proceeds or payments owed by a consumer through civil suit brought against the consumer, use of a third party to pursue collection, use of outbound telephone calls to attempt collection, or sale of an outstanding amount to a third-party debt collector or debt purchaser;
- Charging a late fee, deferral fee, interest, or any other penalty or charge for failure to repay outstanding proceeds;
- Charging interest or finance charges or charging an unreasonable fee to provide expedited delivery of proceeds to a consumer;
- Misleading or deceiving consumers about the voluntary nature of tips, gratuities, or other donations, or making representation that such contributions will benefit any specific individuals if the registrant solicits, charges, or receives these from a consumer; and
- Reporting a consumer's payment or failed repayment of outstanding proceeds to a consumer credit reporting agency or debt collector.

Applicability of EWA Act with State Law

The bill provides that EWA services provided by a registrant in accordance with the EWA Act shall not be considered to be:

- A loan or other form of credit, nor would the registrant be considered a creditor or lender;
- In violation of or noncompliant with the laws of Kansas governing the sale or assignment of, or an order for, earned but unpaid income; or
- Money transmission, nor would the registrant be considered a money transmitter.

The bill also provides that fees, voluntary tips, gratuities, or other donations paid to a registrant are not to be considered interest or finance charges. The bill further specifies that a registrant that provides proceeds to a consumer in accordance with this act is not subject to

provisions of the Uniform Consumer Credit Code in connection with the registrant's EWA services.

Conflict with Law

For any conflict between provisions of this act and any other state statute, the bill provides that provisions of this act control.

Annual Reporting Requirement; Confidential Information; Maintenance of Business Records

The bill requires registrants to file an annual report, on or before April 1 of each year, with the Commissioner relating to earned wage access services provided by the registrant in Kansas during the proceeding year.

Confidential Information; Legislative Review; Written Reports

The bill provides the information contained in the registrant's annual report is confidential and not subject to KORA. This provision will expire on July 1, 2029, unless the Legislature reviews and acts to continue such exception under KORA.

The bill requires a written report detailing an event and its expected impact on the registrant's business to be made to the Commissioner within 15 days of the occurrence of one of the specified events, such as the registrant's filing for bankruptcy or reorganization and the closing or relocation of the registrant's principal place of business.

Failure to Report

The bill provides that the failure to make any required report to the Commissioner may subject the registrant to a late penalty of \$100 for each day such report is overdue.

Business Records

The bill requires registrants to maintain and preserve complete and adequate business records, including a general ledger containing all assets, liabilities, capital, income, and expense accounts for a period of three years. Additional recordkeeping requirements are detailed in the bill.

Registration Denial, Suspension, or Revocation; Opportunity for Hearing

The bill establishes criteria by which the Commissioner may deny, suspend, revoke, or refuse to renew a registration if the Commissioner makes such finding, after notice and opportunity for a hearing in accordance with the provisions of KAPA. Such criteria includes the applicant's failure to file and maintain the required surety, the applicant's or registrant's insolvency, and the applicant, registrant, or an employee of either has been subject to certain disciplinary action by the Commissioner or another regulatory jurisdiction.

Administration of the Act; Powers Granted to Commissioner

The bill authorizes the Commissioner to administer the provisions of the EWA Act and exercise powers as designated, including:

- Adopting, amending, and revoking rules and regulations as necessary to carry out the intent of the EWA Act;
- Investigating and examining the operations, books, and records of an EWA services provider as the Commissioner deems necessary;
- Establishing, charging, and collecting fees from applicants or registrants for reasonable costs of investigation, examination, and administration of the EWA Act, in such amounts as the Commissioner may determine are sufficient to meet the agency's budget requirements;
- Exchanging information regarding the administration of this act with any federal agency or any state that regulates the applicant or registrant or with any attorney general or district attorney with jurisdiction to enforce criminal violations of this act; and
- Requiring fingerprinting of any officer, partner, member, owner, principal, or director of an applicant or registrant. Such fingerprints may be submitted to the KBI and the Federal Bureau of Investigation for a state and criminal history record check to be submitted to the OSBC.

Records and Information Release

The bill requires the KBI to release all records of adult convictions, adjudications, and juvenile adjudications in Kansas and of another state or country to the OSBC. The bill provides that state and national history record checks will be considered confidential and not subject to KORA and its disclosure and legislative review provisions.

The bill further specifies examination reports and correspondence regarding such reports will be considered confidential and not subject to disclosure provisions of KORA. The Commissioner is permitted to release examination reports and correspondence in connection with a disciplinary proceeding conducted by the Commissioner, a liquidation proceeding, or a criminal investigation of a proceeding. The bill further specifies actions the Commissioner is permitted to take in order to conduct examinations, investigations, and proceedings under the EWA Act, and also provide for confidential information contained in informal agreements.

Nationwide Multistate Licensing System and Registry

The bill also requires using of the NMLS for processing applications, renewals, amendments, surrenders, and any other activity the Commissioner deems appropriate. The bill permits the Commissioner to establish relationships or contracts with the NMLS, report

violations of the law as well as enforcement actions to the NMLS, and require any applicant or licensee to file reports to the NMLS in the form prescribed by the Commissioner.

Violations of the EWA Act; Enforcement Actions

The bill prescribes enforcement actions the Commissioner may take in the event the Commissioner determines, after notice and opportunity for a hearing pursuant to the KAPA, that a person has engaged, is engaging in, or is about to engage in an act or practice constituting a violation of any provision of this act, adopted rules and regulations, or issued order. These actions include requiring the person:

- Cease and desist from the unlawful act or practice;
- Pay a fine not to exceed \$5,000 per incident for the unlawful act or practice, and further, in the instance such violation is committed against elder or disabled persons (as defined in consumer protection law), the Commissioner may impose an additional penalty not to exceed \$5,000 for each violation in addition to any other civil penalty provided by law;
 - The bill specifies that any collected fines and penalties associated with the above violations must be designated for use by the Commissioner for consumer education;
- Pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from such violation;
- Take such action as in the judgment of the Commissioner will carry out the purposes of this act; and
- Be barred from subsequently applying for registration under this act.

The bill further specifies actions that could require issuance of an emergency cease-and-desist order and notification requirements, including an opportunity for a hearing.

Failure to Obey a Subpoena; Permissible Actions

The bill establishes requirements for cases of failure or refusal to obey a subpoena and permits a court to issue an order requiring a person to appear before the Commissioner or the Commissioner's designee. Failure to appear could be punished by the court as contempt of court. The bill further specifies that no person could be excused from attending, testifying, or producing any document or record before the Commissioner or in obedience to the subpoena or any proceeding initiated by the Commissioner.

Criminal Penalties; Intentional Violations of the Act; Actions in District Court

The bill states it is unlawful for any person to violate the provisions of, any rules or regulations adopted under, or any order issued under the Act. A conviction for an intentional violation will be a class A nonperson misdemeanor. A second or subsequent conviction will be a severity level 7 nonperson felony.

The bill permits the Commissioner, Attorney General, or a county or district attorney to bring an action in a district court to enjoin any violation of this act or rules and regulations adopted thereunder.

Fees Collected by the Commissioner

The bill provides that all fees collected by the Commissioner are subject to the provisions requiring 10 percent of fees collected to be deposited to the credit of the State General Fund.

Banking Code Amendments

The bill amends the State Banking Code and provisions pertaining to trust companies to address the abandonment or expiration of certain applications; permit any person, regardless of age, to become a depositor in a bank and to enter into an agreement with a bank for the lease of a safe deposit box; and allow an originating trustee to have its principal place of business outside of Kansas.

Abandonment and Expiration of Applications

The bill provides that, if an applicant fails to complete any application under the State Banking Code within 60 days after being notified that the application is incomplete, such application will be considered abandoned and the application fee will not be refunded. The bill permits such applicant to reapply at any time.

The bill also requires a bank or trust company to engage in the activity requiring an application and approval by the Commissioner or the State Banking Board within 18 months from the date of approval. If the bank or trust company fails to comply with this activity deadline, the bill requires the application to be deemed expired and a new application, application fee, and approval to be required.

Extension of Deadline

The bill permits the Commissioner to extend the application deadline indefinitely, if approval from another state or federal regulator is necessary for the bank or trust company to engage in the activity, or up to 180 days for good cause. The State Banking Board may designate the Commissioner to determine the completeness of any application requiring Board approval or deem as expired any Board-approved application.

Bank Depositors; Acceptance of Deposits from Certain Minors

The bill also amends the State Banking Code to allow any person, regardless of age, to become a depositor in a bank and to enter into an agreement with a bank for the lease of a safe deposit box. The bill also specifies that any bank that accepts deposits from certain minors ages 16 or older cannot require a cosigner or the consent of a custodian for deposit of the minor's funds.

Deposits; Instruments for Withdrawal

The bill provides that any person, regardless of age, may become a depositor in any bank and will be subject to the same duties and liabilities respecting that person's deposits. When the deposit is accepted, it may be withdrawn by the depositor by check or instrument in writing or by certain electronic means (e.g., preauthorized direct withdrawal, a debit card, or a network).

Minors in Custody

The bill provides that any bank that accepts deposits from certain minors cannot require a cosigner or the consent of a custodian for the funds to be deposited. Specifically, these deposit requirements on banks apply to minors in the custody of the Secretary for Children and Families, a federally recognized Indian tribe in Kansas, or the Secretary of Corrections. Under the bill, these minors will be responsible for banking costs or penalties associated with the deposits. The bill also provides the Secretary or designee, or any foster or biological parent, is not responsible for banking costs or penalties associated with a deposit.

Safety Deposit Boxes

The bill provides that any person, either as an individual or with others, may enter into an agreement with a bank for the lease of a safe deposit box and will be bound by the terms of this agreement.

Electronic Funds Transfer Participants

The bill states the provisions of the bill shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic funds transfer under the Federal Electronic Fund Transfer Act (15 USC 1693 *et seq.*), as in effect on July 1, 2024, and shall not affect the legal relationship between a minor and any person other than the bank.

Change of Control or Merger—Applications

The bill modifies an application provision for a person acquiring control of a bank or trust company undertaking a merger transaction to provide that, if the Commissioner does not act on the complete application within the 60-day period prior to the proposed change of control or merger and the applicant has received approval from all other applicable federal and state agencies, the application will stand approved.

Trust Companies—Definitions

The bill amends the definition of “originating trustee” to remove language requiring such trustee (e.g., trust company, bank, national banking association, savings and loan association, or savings bank) to have its principal place of business in this state. The bill further permits either the contracting trustee or the originating trustee to have its principal place of business in this state.