



HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

March 6, 2012

Mr. Chairman and Members of the Committee,

I am Judi Stork, the Deputy Bank Commissioner with the Office of the State Bank Commissioner. I am here today to request your support of Senate Bill (SB) 372. This bill relates to our oversight and supervision of money transmitter companies in Kansas.

BACKGROUND AND HISTORY OF MONEY TRANSMISSION

Our agency has regulated the business of money transmission since 1967. Over the course of time, the number of money transmitters we have licensed has increased, which is evidenced on the attached chart. For example, in 1993 we issued licenses to 14 money transmitter companies. We currently license 62 money transmitter companies which conduct money transmission business through 5,955 agents. Also attached is a chart showing all the entities that currently hold money transmitter licenses in Kansas, their respective cities and states, as well as the number of agents each one has designated. As you can see on the chart, we license well recognized companies such as Google, Paypal, American Express, Western Union, and MoneyGram. Please note the companies headquartered in Kansas are highlighted in yellow on the chart.

Not only has the number of money transmitter companies increased over the course of time, but the nature of the money services business has also changed. The money services business has moved away from paper transactions to more online and ACH transactions. Money transmission today includes not only the issuance of traditional money orders and travelers' checks, but also wire transfers, ACH transactions, stored value cards, prepaid payroll cards, and mobile phone transfers. Only 15 of our current 62 licensees still issue money orders. Attached is a chart demonstrating the types of activities conducted by money transmitter companies headquartered in Kansas. A large portion of our growth in the number of companies we license is due to the consumer demand to transfer money out of the country, including Mexico. The increase in the amount of money that has been transferred out of the country has led to higher scrutiny for compliance with the Bank Secrecy Act (BSA) and requirements from Financial Crimes Enforcement Network (FinCEN). There is a need to ensure money transmitter companies and their agents are not facilitating drug and terrorist transactions. Compliance with the BSA and anti-money laundering provisions is a part of our standard examination procedure. Regulation of the money services business is completely different today than it was prior to the events of 9/11/01.

We continually strive to keep up with industry changes. Two years ago in light of the increased number of licensees, our own experience with a failed money transmitter company, and seeing the failures of money transmitter companies in other states, we internally reassigned one FTE to oversee, examine, and enforce the money transmitter act. Since appointing that individual, she has received initial training, shadowed other states' examinations, implemented an examination program, and will soon begin her first examination of a money transmitter company headquartered in Kansas. One of her assigned duties was to review and assess the Kansas Money Transmitter Act compared to other states' laws, the model act issued by the Money Transmitters Regulatory Association, and the Uniform Money Services Act

drafted by the National Conference of Commissioners on Uniform State Laws. Based on this review we are requesting the changes in SB 372.

PROPOSED CHANGES

We vetted the proposed changes in SB 372 with the Money Services Roundtable which represents American Express, Western Union, MoneyGram, RIA, SIGUE, and Integrated Payment Systems (all companies licensed to do business in Kansas). When discussing this issue with the Money Services Roundtable, one of their main concerns was that Kansas law be no more restrictive than other states' laws. The Money Services Roundtable provided comments and suggestions which we took into account in drafting this language. The Money Services Roundtable was satisfied with our proposed language and has submitted written testimony in support of this bill.

To briefly summarize, we are asking for the following changes:

(a) Permissible investments – Money transmitter companies are required to keep an amount of “permissible investments” equal to the aggregate amount of their issued and outstanding payment instruments. The purpose of this requirement is to ensure that all outstanding money transmissions are covered dollar for dollar. It is prudent that we ensure such investments are of a certain quality. Most of the changes eliminate outdated investment products that we no longer see. The other change to this section is to limit the amount of accounts receivable that a company can rely upon in satisfying this requirement. Since there is a risk that accounts receivables may not be collected in full, we believe limiting the amount a prudent action. Beyond this purpose, there is no restriction upon what a money transmitter can invest in.

(b) Fee structure -- We are asking that we be allowed to establish our fees annually based on the approved budgetary cost to run this program for the following year. Currently, the fees are established by rule and regulation. Allowing the agency to adjust each year the license fees to be charged to money transmitters ensures the regulated entities will be charged only what is necessary to offset the costs of administering and enforcing the Act. The agency's budget will be approved through the legislative appropriations process.

(c) Authority to regulate unlicensed activity – Currently, the agency has no power to regulate unlicensed activity. The only way to address unlicensed activity is by referring the matter to the local prosecutor for criminal prosecution or to seek an injunction. From a practical standpoint, this becomes a difficult issue when most companies are not even headquartered in Kansas. If we have the authority to take administrative action and to enjoin unlicensed activity occurring in the state, our licensed companies will no longer be competitively disadvantaged (e.g. unlicensed companies don't pay license fees and are not examined for compliance with the law.)

(d) Enforcement authority – Currently, the only disciplinary tool available to our agency is to revoke a license. We are requesting additional authority to issue orders less severe than revocation of a license. The authority would include the ability to issue a cease and desist order, consent order, or an order to suspend a license. Additionally, we are requesting the commissioner have the authority to fine, order restitution, or bar from future application any person who has violated the act, any regulation adopted thereto, or an order of the Commissioner.

(e) Prohibited Acts – Currently, the Commissioner can revoke a license for reasons such as a licensee is no longer financially able to perform or has actually failed to perform its obligations, if a key person has been convicted of a crime involving fraud, deceit, or dishonesty, if the licensee has failed to pay a fee required by the Act, or if the licensee fails to cooperate with an examination. The proposed language would expand the reasons for the disciplinary action to include falsifying information on their

license application, civil judgments, deceptive advertising, and fraudulent or deceptive conduct. It would seem to be prudent regulation to hold the industry to these standards.

In summary, these proposed changes are in line with several other states' laws. Additionally, these same types of provisions can be found in Kansas laws pertaining to banks, trust companies, mortgage companies, finance companies, payday lenders, title lenders, and debt management companies.

WHAT PROBLEM IS THIS BILL ADDRESSING?

You may question what problems exist which necessitate this change. It has increasingly come to our attention that there are unlicensed companies engaging in the business of money transmission in the State, and we do not have the enforcement ability to stop the business or require them to be licensed.

Additionally, as we begin our on-site examination procedures we anticipate that we may find violations of law, non-compliance with the BSA, and concerns regarding what should be considered prudent business practices. Under the current law, our only recourse to address these concerns will be to revoke the company's license. This bill would allow us to address these concerns in a less severe manner. You may question why we need this authority now. As you well know, this is what our agency does – we regulate financial entities day in and day out. We have the experience to establish a defined examination program to deal with financial entities in a fair and reasonable manner. We know that the ability to enforce compliance with the law is necessary in order to have effective regulatory oversight. I cannot imagine how ineffective it would be if the only ability to deal with a problem situation in a bank would be to pull their charter. That is how this law for money transmitter companies is currently written. Our only ability to deal with concerns is to revoke a money transmitter company's license.

HOW WILL THESE CHANGES AFFECT AGENTS OF LICENSEES?

You will often see money transmitter services offered at Walmart stores, grocery stores, convenience stores, and other local establishments. In almost all cases, these entities are agents of a licensed money transmitter company (e.g. Western Union, American Express). Under the current law, the agents are exempt from licensure. We are not proposing to change this. Under current law we have the authority to conduct agent visits to ensure compliance with the Money Transmitter Act, BSA, and FINCEN. This bill would not alter this examination authority.

The need to expand our regulatory oversight of money transmitter companies is to protect Kansas consumers relying on those companies to transmit funds, whether it is across the state, across the country, or internationally. I would appreciate the favorable support of the committee to allow our agency to perform our duties in a fair and reasonable manner. Thank you for your time. I am happy to answer questions for the committee.