

SENATE BILL No. 21

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning financial institutions; relating to the Kansas money
2 transmitter act; amending K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a
3 and repealing the existing sections.
4

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

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

8 (a) "Agent" means a person designated by a licensee to receive funds
9 from a Kansas resident in order to forward such funds to the licensee to
10 effectuate money transmission at one or more physical locations
11 throughout the state or through the internet, regardless of whether such
12 person would be exempt from the act by conducting money transmission
13 on such person's own behalf;

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

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

19 (d) "electronic instrument" means a card or other tangible object for
20 the transmission or payment of money, including a prepaid access card or
21 device which contains a microprocessor chip, magnetic stripe or other
22 means for the storage of information, that is prefunded and for which the
23 value is decremented upon each use, but does not include a card or other
24 tangible object that is redeemable by the issuer in goods or services;

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

26 (f) "nationwide multi-state licensing system and registry" means a
27 licensing system developed and maintained by the conference of state
28 bank supervisors, or its successors and assigns, for the licensing and
29 reporting of those persons engaging in the money transmission;

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

32 (h) "money transmission" means to engage in the business of the sale
33 or issuance of payment instruments or of receiving money or monetary
34 value for transmission to a location within or outside the United States by
35 wire, facsimile, electronic means or any other means, except that money
36 transmission does not include currency exchange where no transmission of

1 money occurs;

2 (i) "outstanding payment liability" means:

3 (1) With respect to a payment instrument, any payment instrument
4 issued or sold by the licensee which has been sold in the United States
5 directly by the licensee, or any payment instrument that has been sold by
6 an agent of the licensee in the United States, which has been reported to
7 the licensee as having been sold and which has not yet been paid by or for
8 the licensee; *or*

9 (2) with respect to the transmission of money or monetary value, any
10 money or monetary value the licensee or an agent of the licensee has
11 received from a customer in the United States for transmission which has
12 not yet been delivered to the recipient or otherwise paid by the licensee;

13 (j) "payment instrument" means any electronic or written check,
14 draft, money order, travelers check or other electronic or written
15 instrument or order for the transmission or payment of money, sold or
16 issued to one or more persons, whether or not such instrument is
17 negotiable. The term "payment instrument" does not include any credit
18 card voucher, any letter of credit or any instrument which is redeemable by
19 the issuer in goods or services;

20 (k) "permissible investments" means:

21 (1) Cash;

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

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

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

29 (5) investment grade bonds and other legally created general
30 obligations of a state, an agency or political subdivision of a state, the
31 United States or an instrumentality of the United States;

32 (6) obligations that a state, an agency or political subdivision of a
33 state, the United States or an instrumentality of the United States has
34 unconditionally agreed to purchase, insure or guarantee and that bear a
35 rating of one of the three highest grades as defined by a nationally
36 recognized organization that rates securities;

37 (7) shares in a money market mutual fund, interest-bearing bills or
38 notes or bonds, debentures or stock traded on any national securities
39 exchange or on a national over-the-counter market, or mutual funds
40 primarily composed of such securities or a fund composed of one or more
41 permissible investments as set forth herein;

42 (8) receivables that are payable to a licensee, in the ordinary course of
43 business, pursuant to contracts which are not past due and which do not

1 exceed in the aggregate 40% of the total required permissible investments
2 pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past
3 due if not remitted to the licensee within 10 business days; or

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

6 (l) "person" means any individual, partnership, association, joint-
7 stock association, trust, corporation or any other form of business
8 enterprise;

9 (m) "resident" means any natural person or business entity located in
10 this state; ~~and~~

11 (n) "*service provider*" means any person that provides equipment or
12 software that is used and solely controlled by an exempt entity or its agent
13 to engage in the exempt entity's own money transmission services; and

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

18 Sec. 2. K.S.A. 2016 Supp. 9-509 is hereby amended to read as
19 follows: 9-509. (a) No person shall engage in the business of selling,
20 issuing or delivering its payment instrument, check, draft, money order,
21 personal money order, bill of exchange, evidence of indebtedness or other
22 instrument for the transmission or payment of money or otherwise engage
23 in the business of money transmission with a resident of this state, or,
24 except as provided in K.S.A. 9-510, and amendments thereto, act as agent
25 for another in the transmission of money as a service or for a fee or other
26 consideration, unless such person files ~~an~~ a complete application and
27 obtains a license from the commissioner.

28 (b) Each license shall expire December 31 of each year. A license
29 shall be renewed by filing with the commissioner a complete application
30 and nonrefundable application fee at least 30 days prior to expiration of
31 the license. *Renewal applications received between December 1 and*
32 *December 31 of each year and incomplete renewal applications as of*
33 *December 1 of each year shall be assessed a late fee.* Expired licenses
34 may be reinstated through ~~February 28~~ *the last day of February* of each
35 year by filing a reinstatement application and paying the appropriate
36 application and late fees.

37 (c) It shall be unlawful for a person, acting directly or indirectly or
38 through concert with one or more persons, to acquire control of any person
39 engaged in money transmission through purchase, assignment, pledge or
40 other disposition of voting shares of such money transmitter, except with
41 the prior approval of the commissioner. Request for approval of the
42 proposed acquisition shall be made by filing ~~an~~ a complete application
43 with the commissioner at least 60 days prior to the acquisition.

1 (d) All applications shall be submitted in the form and manner
2 prescribed by the commissioner. Additionally, the following shall apply to
3 all applications:

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

20 (2) An application shall be accompanied by nonrefundable fees
21 established by the commissioner for the license ~~and each agent location~~.
22 The commissioner shall determine the amount of such fees to provide
23 sufficient funds to meet the budget requirements of administering and
24 enforcing the act for each fiscal year. ~~For the purposes of this subsection,~~
25 ~~"each agent location" means each physical location within the state where~~
26 ~~money transmission is conducted, including, but not limited to, branch~~
27 ~~offices, authorized vendor offices, delegate offices, kiosks and drop boxes.~~
28 Any person using the multi-state licensing system shall pay all associated
29 costs.

30 (3) (A) The commissioner may require fingerprinting of any
31 individual, officer, director, partner, member, shareholder or any other
32 person related to the application deemed necessary by the commissioner. If
33 the applicant is a publicly traded corporation or a subsidiary of a publicly
34 traded corporation, no fingerprint check shall be required. Fingerprints
35 may be submitted to the Kansas bureau of investigation and the federal
36 bureau of investigation for a state and national criminal history record
37 check. The fingerprints shall be used to identify the person and to
38 determine whether the person has a record of arrests and convictions in
39 this state or other jurisdiction.

40 (B) The commissioner may use information obtained from
41 fingerprinting and the criminal history for purposes of verifying the
42 identification of the person and in the official determination of the
43 qualifications and fitness of the person, or in the case of an applicant

1 company, the persons associated with the company.

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

8 (D) Whenever the commissioner requires fingerprinting, any
9 associated costs shall be paid by the applicant or the parties to the
10 application.

11 (4) Each application shall include audited financial statements for
12 each of the two fiscal years immediately preceding the date of the
13 application and an interim financial statement, as of a date not more than
14 90 days prior to the date of the filing of an application. The audited and
15 interim financial statements shall be prepared in accordance with United
16 States generally accepted accounting principles or in any other form or
17 manner approved by the commissioner. Any person not in business two
18 years prior to the filing of the application shall submit a statement in the
19 form and manner prescribed by the commissioner sufficient to demonstrate
20 compliance with subsection (e).

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

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

30 (2) such person shall deposit and at all times keep on deposit with a
31 bank in this state approved by the commissioner, cash or securities
32 satisfactory to the commissioner in an amount not less than \$200,000. The
33 commissioner may increase the amount of cash or securities required up to
34 a maximum of \$1,000,000 upon the basis of:

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

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

39 (3) in lieu of the deposit of cash or securities required by this
40 subsection, such person may give a surety bond in an amount equal to that
41 required for the deposit of cash or securities, in a form satisfactory to the
42 commissioner and issued by a company authorized to do business in this
43 state, which bond shall be payable to the office of the state bank

1 commissioner and be filed with the commissioner; and

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

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

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

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

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

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

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

30 ~~(h)~~ (h) The aggregate liability of the surety for all breaches of the
31 conditions of the bond, in no event, shall exceed the amount of such bond.
32 The surety on the bond shall have the right to cancel such bond upon
33 giving 30 days' notice to the commissioner and thereafter shall be relieved
34 of liability for any breach of condition occurring after the effective date of
35 the cancellation. The commissioner or any aggrieved party may enforce
36 claims against such deposit of cash or securities or surety bond. So long as
37 the depositing person is not in violation of this act, such person shall be
38 permitted to receive all interest and dividends on the deposit and shall
39 have the right to substitute other securities satisfactory to the
40 commissioner. If the deposit is made with a bank, any custodial fees shall
41 be paid by such person.

42 ~~(i)~~ (i) (1) The commissioner shall have the authority to examine the
43 books and records of any person operating in accordance with the

1 provisions of this act, at such person's expense, to verify compliance with
2 state and federal law.

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

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

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

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

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

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

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

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

35 (e) the person concealed a fact or a condition exists which would
36 clearly have justified the commissioner's refusal to grant a license had the
37 fact or condition been known to exist at the time the application for the
38 license was made;

39 (f) the person or a senior officer, director or a stockholder who owns
40 more than 10% of the money transmission business' outstanding stock has
41 been convicted of a crime involving fraud, dishonesty or deceit;

42 (g) there has been entry of a federal or state administrative order
43 against the person for violation of any rule and regulation applicable to the

1 conduct of the person's money transmission business;

2 (h) the person refused to provide information requested by the
3 commissioner or refused to permit an examination or investigation by the
4 commissioner;

5 (i) a failure to pay to the commissioner any fee required by this act;

6 (j) the person has engaged in any transaction, practice or business
7 conduct that is fraudulent or deceptive in connection with the business of
8 money transmission;

9 (k) the person advertises, displays, distributes, broadcasts or televises
10 any false, misleading or deceptive statement or representation with regard
11 to rates, terms or conditions for the transmission of money;

12 (l) the person fails to keep and maintain sufficient records to permit
13 an audit to satisfactorily disclose to the commissioner the licensee's
14 compliance with the provisions of the act;

15 (m) the person has been the subject of any disciplinary action by this
16 or any other state or federal agency;

17 (n) a final judgment has been entered against the person in a civil
18 action and the commissioner finds the conduct on which the judgment is
19 based indicates that it would be contrary to the public interest to permit
20 such person to be licensed;

21 (o) the person has violated any order issued by the commissioner, any
22 provision of this act, any rule and regulation adopted thereto, or any other
23 state or federal law applicable to money transmission; or

24 (p) the person has refused or otherwise failed to provide, after a
25 reasonable time as determined by the commissioner, any information
26 necessary to approve or renew an application or license issued pursuant to
27 this act.

28 Sec. 4. K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a are hereby
29 repealed.

30 Sec. 5. This act shall take effect and be in force from and after its
31 publication in the statute book.