

Amendments to the Kansas Banking Code, Kansas Money Transmitter Act, Kansas Mortgage Business Act, and Kansas Credit Services Organization Act; SB 20

SB 20 amends the Kansas Banking Code and three acts subject to the oversight of the State Bank Commissioner—the Kansas Money Transmitter Act, the Kansas Mortgage Business Act, and the Kansas Credit Services Organization Act.

Kansas Banking Code—Amendments

The bill makes several amendments to the Kansas Banking Code. The bill updates language concerning a bank's investment in foreign bonds to clarify the amount cannot exceed 1 percent of the bank's capital stock and surplus; amends language relating to lending limits to provide an exemption for segregated deposits; and makes other clarifying language updates technical in nature. Additionally, the bill requires any bank or trust company owning tangible property to insure that property against loss. Further, the bill requires banks and trust companies to record minutes of annual stockholders' meetings and detail any action taken by the stockholders, including the election of directors.

The bill also amends the Kansas Banking Code to allow state-chartered banks to purchase tax credits for certain historic structure rehabilitation expenditures provided for in the Kansas Income Tax Act. The bill limits the amount of tax credits a state-chartered bank can hold at a given time to no more than 25 percent of the total sum of the bank's capital stock, surplus, undivided profits, 100 percent of the allowance for loan and lease loss, capital notes and debentures, and reserve for contingencies.

Kansas Money Transmitter Act—Amendments

The bill amends provisions of the Kansas Money Transmitter Act (KMTA). The bill adds a definition of "service provider" to mean any person providing services specified in continuing law (those that have a written agreement with banks, building and loan associations, savings and loan associations, savings banks, or credit unions to provide for receipt and delivery of funds, network access, processing, clearance, or settlement services in support of money transmission activities) used by an exempt entity or its agent to provide money transmission services to the exempt entity's customers. The definition specifies that a service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or agent.

Additionally, the bill requires a late fee for renewal applications received between December 1 and 31 of each year; requires a late fee for incomplete applications as of December 1 of each year; changes a date relating to the reinstatement of expired licenses to the last day of February; and eliminates language basing the licensing fee on the number of agent locations.

Further, the bill authorizes the State Bank Commissioner (Commissioner) to determine the completeness of any application submitted under the KMTA. The Commissioner is required to take into consideration compliance with all application requirements and any other facts and circumstances deemed appropriate by the Commissioner. The bill specifies an application will

be considered abandoned and the application fee will not be returned if the applicant fails to complete the application for a new license or for a change of control of a license within 60 days after the Commissioner provides written notice of an incomplete application. The license expires on December 31 if the applicant fails to file a complete renewal application on or before December 31 of that year. An abandoned application will not preclude an applicant from reapplying for licensure.

Kansas Mortgage Business Act—Amendments

The bill amends provisions of the Kansas Mortgage Business Act (KMBA). The bill clarifies no other license, other than a KMBA license, is required to conduct mortgage business in Kansas.

The bill requires the Commissioner to deem an application for mortgage company or loan origination licensure or registration to be abandoned if the applicant fails to complete the application within 60 days after the Commissioner provides notice to the applicant of an incomplete application. If the Commissioner deems the application to be abandoned, the applicant is permitted to reapply for licensure or registration and pay a nonrefundable fee of not less than \$50, or the applicant may make a written request for a hearing pursuant to the Kansas Administrative Procedure Act (KAPA).

Additionally, the bill permits applicants and licensees to use an alternative accounting system, other than the generally accepted accounting principles (GAAP), to provide evidence of a minimum net worth of \$50,000. The applicant or licensee is required to demonstrate the alternative accounting system meets or exceeds GAAP.

Further, the bill requires information contained in the annual reports submitted by each KMBA licensee to remain confidential; however, publication of composite information is permitted. This provision will sunset on July 1, 2022.

Kansas Credit Services Organization Act—Amendments

The bill enacts and amends law relating to the Kansas Credit Services Organization Act (KCSOA).

Definitions

The bill adds and amends definitions to be used in the KCSOA. The bill amends the definition of “Commissioner” to specify the Commissioner is the State Bank Commissioner or designee. The designee is the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner. Additionally, the bill updates the definitions for “debt management service” and “trust account,” and deletes the definitions for “related interest” and “registrant.”

The bill establishes definitions for the following terms:

- “Licensee” means a person who is licensed by the Commissioner as a credit service organization (CSO). [*Note:* The bill replaces all references of “registrant” in the KCSOA with “licensee,” in addition to replacing “registration” with “licensing,” “license,” or “licensure,” and “registered” with “licensed” to reflect this definition change.]; and
- “Nationwide Mortgage Licensing System and Registry” (NMLSR) means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other financial service providers.

Licensee Requirements

Application for licensing fee. The bill removes the \$100 nonrefundable application fee for licensing CSOs and authorizes the Commissioner to set the licensing fee through the adoption of rules and regulations.

License expiration. The bill specifies CSO licenses issued under the KCSOA expire on April 30 of each year.

Surety bond requirements. The bill amends the requirements for a licensee to file a surety bond with the Commissioner. The bill expands the requirement that a surety bond may not be terminated without 30 days prior written notice to the Commissioner by specifying such termination will not affect the surety’s liability for violations of the KCSOA occurring prior to the effective date of cancellation. Additionally, principal and surety is required to be and remain liable for a period of two years from the date of any action or inaction of the principal giving rise to a claim under the surety bond.

Duties of the Licensee Relating to Debt Management Services

The bill amends provisions relating to the duties of a licensee relating to debt management services. The bill amends the KCSOA to state no person required to be licensed by the Act shall engage in debt management services, unless the person has met all criteria. The bill amends the criteria by requiring a licensee to include all outstanding debt obligations, as listed on the consumer’s credit report, as well as any debt obligations identified by the consumer, for the purpose of the initial budget plan. The bill updates reference to the plan between the consumer and licensee to refer to a debt management services agreement. Additionally, the bill updates the requirements for the written debt management services agreement to include the full legal name and doing business as (“dba”) name of the licensee.

The bill requires the name and license number of the licensee on record with the Commissioner on all solicitations and published advertisements concerning a CSO directed at Kansas residents, including those solicitations and published advertisements on the Internet or by other electronic means. Each licensee is required to maintain a record of all solicitations or advertisements for 36 months. The bill specifies “advertising” does not include business cards or promotional items. The bill prohibits solicitations and advertisements from containing false, misleading, or deceptive information. Further, the bill prohibits a licensee conducting CSO business in Kansas from using any name other than the name stated on the license.

Prohibited Acts

The bill updates the prohibition on using false or misleading representation in the offer or sale of services of a debt management services agreement or CSO business by removing a specific reference to erasing bad credit. The bill also prohibits a licensee from giving a reward, bonus, premium, commission, or any other consideration for the referral of a consumer to the licensee's CSO business and from charging the consumer for the amount.

Disbursement of Certain Funds

The bill increases the amount of time the CSO has to disburse consumer funds to the consumer's creditors from 10 to 20 calendar days, or the latest date before the consumer incurs any fee, charge, or penalty due to delay in payment.

Reporting Requirements

Reports to the consumer. The bill amends the requirements for licensee reports provided to a consumer. The bill specifies the report provided to the consumer must contain information about the total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer, and the amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

Annual report to the Commissioner. The bill amends the annual reporting requirement by changing the date, from March 1 to April 1, for the annual report filed with the Commissioner each year relating to CSO business conducted by the licensee during the preceding calendar year. The bill also specifies information contained in the annual report is confidential and may be published only in composite form. The confidentiality provision will sunset on July 1, 2022.

Reporting requirement based on certain events. The bill adds 2 events that require a licensee to file a written report with the Commissioner within 15 days after the event occurs: a change in the licensee's name or legal entity status, and the addition or loss of any owner, officer, partner, or director.

Fees Charged to the Consumer

The bill amends and enacts new law relating to fees charged by CSOs to consumers. The bill increases the fee, from not exceeding \$50 to not exceeding \$75, that the licensee could charge a consumer for a one-time consultation. The bill also increases the total maintenance fee a licensee may charge a consumer from \$20 to \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the licensee and the consumer, whichever is less.

The bill replaces a specific fee charged to a consumer with language stating the licensee may charge the consumer with a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, and other counseling services authorized by the Commissioner.

Additionally, the bill permits the CSO to charge a consumer up to \$30 one time for each insufficient payment, and up to \$5 to process a payment by the consumer to the CSO through electronic means, if authorized by the consumer. The bill specifies no charge will be assessed when the consumer has agreed to make all scheduled payments by electronic means.

The CSO is allowed to waive any fees if the CSO determines the consumer is unable to pay the fees.

Powers, Duties, and Action of the Commissioner

The bill amends and enacts new language relating to the Commissioner's powers and duties under the KCSOA.

Investigation and examination; costs; confidentiality. The bill removes language relating to the specific reasons for when the Commissioner is permitted to investigate and examine the CSO's operations, books, and records.

The bill also updates language relating to the costs the Commissioner may charge to an applicant or licensee. The Commissioner is permitted to charge reasonable costs of investigation, examination, and administration of the KCSOA to the applicant or licensee, in an amount the Commissioner is permitted to determine is sufficient to meet the budget requirements of the Commissioner for each fiscal year.

The bill requires the examination reports and correspondence regarding the reports made by the Commissioner or the Commissioner's designees to be confidential. The confidential materials subsection will sunset on July 1, 2022.

Nationwide Mortgage Licensing System and Registry. The bill authorizes the Commissioner to utilize the NMLSR as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any government agency, in order to reduce the points of contact the Federal Bureau of Investigation has with individual states.

The Commissioner is permitted to use the NMLSR as a channeling agent for requesting and distributing information regarding CSO licensing to and from any source directed by the Commissioner.

Additionally, the Commissioner is authorized to establish relationships or contacts with the NMLSR or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, or other persons under the KCSOA, and to take other actions as may be reasonably necessary to participate in the NMLSR.

Informal agreements. The Commissioner is authorized to enter into a plan of action, known as an informal agreement, with any person to address violations of the KCSOA. An informal agreement is not subject to provisions of KAPA or the Kansas Judicial Review Act and will not be considered an order or other agency action. The informal agreement is confidential and privileged; not subject to the Kansas Open Records Act, subpoena, and discovery; and not admissible in evidence in any private civil action. This subsection will sunset on July 1, 2022.

Kansas Administrative Procedure Act. The Commissioner is authorized to issue, amend, and revoke written administrative guidance documents in accordance with the applicable provisions of the KAPA.

Commissioner action following notice. If the Commissioner determines, after notice and opportunity for a hearing pursuant to the KAPA, a person has engaged, is engaging, or is about to engage in an act in violation of the KCSOA, rule and regulation, or order, the Commissioner may require, by order, the following new penalties:

- If such violation is committed against elder or disabled persons as defined in KSA 2016 Supp. 50-676 (persons who are 60 years of age or older; persons who have physical or mental impairment, or both, which substantially limits one or more of such person's major life activities), the Commissioner may impose an additional penalty, not to exceed \$10,000 for each violation, in addition to any civil penalty provided by law; or
- Issue an order requiring the person to pay restitution for any loss arising from the violation, or requiring the person to disgorge any profits arising from the violation. The order may include the assessment of interest, not to exceed 8 percent *per annum* from the date of the violation.