

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 406

As Amended by House Committee on Financial
Institutions and Pensions

Brief*

SB 406, as amended, would repeal and replace the Kansas Money Transmitter Act (KSA 9-508 *et seq.*) with the Kansas Money Transmission Act (Act). The bill would require the State Bank Commissioner (Commissioner) to provide oversight of the electronic transmission of money and establish the powers, duties, and responsibilities of the Commissioner under the Act. The bill would also establish a licensing and renewal process for persons licensed under the Act. Additionally, the bill would establish penalties for violations of the Act.

The bill would become effective and be in force from and after January 1, 2025, and its publication in the statute book.

Kansas Money Transmission Act

Definitions (Section 1)

The bill would define terms as used in the Act, including:

- “Money” would 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;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Money transmission” would 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.

“Money transmission” would not include the provision of solely online or telecommunications services or network access.

- “Person” would 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” would mean the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

Exemptions (Section 2)

The bill would provide a list of entities the Act would 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 if:
 - A written agreement exists between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;
 - The payee holds the agent out to the public as accepting payments for goods and services on the payee's behalf; and
 - Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;
- 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:
 - Is properly licensed or exempt from licensing requirements under this act;
 - Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and
 - Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient;

- 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 an agent of the USPS;
- Any 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;
- A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to federal law; 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 a federal, state, county, or governmental agency or instrumentality thereof or on behalf of a state or governmental subdivision, agency, or instrumentality thereof;
- 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 as or for such a board;
- A futures commission merchant registered under federal commodities law to the extent of the registrant's operation as such a futures commission merchant;

- A person registered as a securities broker-dealer under federal or state securities law to the extent of such registrant's operation as such a securities broker-dealer;
- An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of the Act 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 that directs the agent 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 an employee or any other party 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 would be permitted to require that any person claiming to be exempt from licensing provide information and documentation to the Commissioner demonstrating that such person qualifies for any claimed exemption.

Implementation—State Bank Commissioner (Section 3)

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 under this act;

- Use hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this act;
- Accept from other state or federal government agencies or officials, licensing, examination, or investigation reports made by such 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 would 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 applications, examinations, investigations, and other actions required to provide sufficient funds to meet the budget requirements of administering and enforcing the Act for each fiscal year and to achieve the purposes of this act.

Confidentiality (Section 4)

Except as otherwise provided, the following documents would be 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 would expire on July 1, 2030, unless the Legislature reviewed and reenacted such provisions in accordance with KORA prior to that date.

The Commissioner would be permitted to disclose information not otherwise subject to disclosure to representatives of state or federal agencies who promise in a record that such representatives will 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 would state the following information contained in the records of the Office of the State Bank Commissioner (OSBC) is not confidential and may be made available to the public:

- The name, business address, telephone number, and unique identifier of a licensee;

- The business address of a licensee's registered agent for service;
- The name, business address, and telephone number of all authorized delegates;
- The terms of or a copy of any bond filed by a licensee, provided that confidential information, including, but not limited to, prices and fees for such bond is redacted; or
- Copies of any orders of the OSBC relating to any violation of or regulations implementing this act.

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

Examination (Section 5)

The bill would authorize 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 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, which, on being accepted, would be considered an official report of the Commissioner; and
- Summon and examine under oath or subpoena a key individual or employee of a licensee or authorized delegate and require such individual or employee 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 would be required to provide the Commissioner with full and complete access to all records the Commissioner would reasonably require to conduct a complete examination. The records would be provided at the location and in the format specified by the Commissioner. The Commissioner could utilize multistate record production standards and examination procedures when such standards would reasonably achieve these requirements.

Unless otherwise directed by the Commissioner, the licensee would be required to pay all costs reasonably incurred in connection with an examination.

Multistate Supervision (Section 6)

To administer and enforce the provisions of the Act and minimize the regulatory burden, the Commissioner would be 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 thereof for all licensees that hold licenses in

Kansas or other states. As a participant in such established multistate supervisory processes, the Commissioner could:

- Cooperate, coordinate, and share information with other state and federal regulators in accordance with examination provisions of the Act (Section 5);
- Enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations, the membership of which is made up of state or federal governmental agencies; and
- Cooperate, coordinate, and share information with organizations, the membership of which is made up of state or federal governmental agencies, if the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with disclosure provisions of the Act (Section 4).

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 (Section 7)

The bill would provide 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. If there are inconsistencies between the Act and any federal

law that governs, the Commissioner would be authorized to provide interpretive guidance that identifies the inconsistency and appropriate means of compliance with federal law.

License Prohibitions (Section 8)

A person would 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 (Section 2) and does not engage in money transmission outside the scope of such exemption.

A license issued under the Act would not be transferable or assignable.

Licensing Practices (Section 9)

To establish consistent licensing practices between Kansas and other states, the bill would authorize 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 would be 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 processes and supervision processes;
- Process fees; and
- Facilitate communication between the Commissioner and licensees or other persons subject to the Act.

Under the bill, the Commissioner would be 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 would be authorized to establish requirements or waive or modify, in whole or in part, any or all of the existing 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 (Section 10)

An applicant for a license would be required to submit a completed application in a form and manner as prescribed by the Commissioner. The bill would require the application to

contain content as set forth by rules and regulations, instruction, or procedure of the Commissioner and could be changed or updated by the Commissioner in accordance with applicable law to carry out the purposes of the Act and maintain consistency with NMLS licensing standards and practices. The application would state or contain, as applicable:

- The legal name and any fictitious or trade name used by the applicant in conducting business and the residential and business address of the applicant;
- A list of any criminal convictions of the applicant and any material litigation in which the applicant was involved in the ten-year period immediately preceding the submission of the application;
- A description of any money transmission services previously provided by the applicant and the money transmission services the applicant seeks to provide in Kansas;
- A list of the applicant's proposed authorized delegates and the locations in Kansas where the applicant and the applicant's authorized delegates proposed to engage in money transmission;
- A list of all other states where the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in other states;
- Information concerning any bankruptcy or receivership proceedings affecting the licensee or person in control of a licensee;
- A sample form of the contract for authorized delegates, if applicable;

- A sample form of the payment instrument or stored value, as applicable;
- The name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and
- Any other information the Commissioner or the NMLS reasonably requires regarding the applicant.

If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant would also be required to provide:

- The date of the applicant's incorporation or formation and state or country of incorporation or formation;
- A certificate of good standing from the state or country where the applicant is incorporated or formed, if applicable;
- A brief description of the business structure or organization of the applicant, including any parents or subsidiaries of the applicant and whether any such parents or subsidiaries are publicly traded;
- The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, for the ten-year period immediately preceding the submission of the application for each key individual and person in control of the applicant;
- For any person in control of the applicant, a list of any felony convictions and, for the ten-year period immediately preceding the submission of the application, a list of any criminal misdemeanor convictions of a crime of dishonesty, fraud, or

deceit and any material litigation in which the person involved is in control of an applicant that is not an individual;

- A copy of the applicant's audited financial statements for the most recent fiscal year and for the two-year period immediately preceding the most recent fiscal year or, if acceptable to the Commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the Commissioner;
- A certified copy of the applicant's unaudited financial statements for the most recent fiscal quarter;
- If the applicant is a publicly traded corporation, a copy of the most recent report filed with the Securities and Exchange Commission;
- If the applicant is a wholly owned subsidiary of:
 - A corporation publicly traded in the United States, a copy of the parent corporation's audited financial statements for the most recent fiscal year or a copy of the parent corporation's most recent financial report filed with the Securities and Exchange Commission; or
 - A corporation publicly traded outside the United States, a copy of documentation similar to the requirements for corporations publicly traded in the United States, filed with the regulator of the parent corporation's domicile outside the United States;
- The name and address of the applicant's registered agent in Kansas; and
- Any other information that the Commissioner reasonably requires regarding the applicant.

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

Requirements for Applicants (Section 11)

As part of any original application, the bill would require 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 would include the following:

- The OSBC could require an individual to be fingerprinted and submit to a state and national criminal history record check. The fingerprints would be used to identify the individual and to determine whether the individual has a record of criminal history in Kansas or other jurisdictions. The OSBC would be authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for a state and national criminal history record check. The OSBC would be able to use the information obtained from fingerprinting and criminal history 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;
- Local and state law enforcement would be required to assist the OSBC in taking and processing of fingerprints of applicants for and holders of any license, registration, permit, or certificate;
- The KBI would be required to 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;

- Any individual that currently resides and has continuously resided outside the United States for the past ten years would not be required to comply with these provisions; 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. This requirement would be 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 would also be required to provide an investigative background report prepared by an independent search firm.

At a minimum, the search firm would be required to:

- Demonstrate that it has sufficient knowledge and resources and that the firm employs accepted and

reasonable methodologies to conduct the research of the background report; and

- Not be affiliated with or have an interest with the individual it is researching.

The investigative background report would be provided in English and, at a minimum, contain the following:

- A comprehensive credit report or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked if the report is available in the individual's current jurisdiction of residency;
- Criminal records information for the ten-year period immediately preceding the individual's application, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;
- Employment history;
- Media history, including an electronic search of national and local publications, wire services, and business applications; and
- Financial services-related regulatory history, including, but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

Under the bill, any information required could 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 (Section 12)

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 would authorize 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 would be aggregated with the interest of any other immediate family member, including the individual's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons-in-law and daughters-in-law, brothers-in-law and sisters-in-law, and any other person who shares the individual's home.

Application Approval; Denial; Licensure of (Section 13)

When an application for an original license under the Act appears to include all the items and addresses all of the matters that are required, the application would be deemed complete, and the Commissioner would promptly notify the applicant of the date the application is deemed complete. The Commissioner would 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 bill would allow the Commissioner to extend the application period for good cause.

A determination by the Commissioner that an application is complete and accepted for processing would mean that the application, on its face, appears to include all of the items, including the criminal history background check response from the KBI, and that such application addresses all of the required matters. A determination of completion by the Commissioner would 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 would be required to investigate the applicant's financial condition and responsibility, financial and business experience, and character and general fitness. The Commissioner would be authorized to conduct an on-site investigation of the applicant at the applicant's expense. The Commissioner would 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 would 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 would be authorized to investigate the applicant utilizing the time frames established by agreement through the multistate licensing process. No such time frames would be considered noncompliant with the application period described in the bill.

The Commissioner would issue a formal written notice of the denial of a license application within 14 days of the decision to deny the application. The Commissioner would state in the notice of denial 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 (KSA 77-501 *et seq.*).

The initial license term would begin on the day the application is approved. The license would 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 would run through December 31 of the following year.

Renewal of Licenses (Section 14)

A license issued under the Act would be renewed annually. An annual renewal fee set by the Commissioner would be paid not more than 60 days before the license expiration. The bill would specify the renewal term would be for a period of one year and would begin on January 1 of each year after the initial license term and expire on December 31 of the year the renewal term begins.

A licensee would submit a complete renewal report with the renewal fee, in a form and manner determined by the Commissioner. The renewal report would contain a description of each material change in information submitted

by the licensee in the licensee's original license application that has not been reported to the Commissioner.

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 would be subject to a late fee set by the Commissioner. The Commissioner would be able to grant an extension of the renewal date for good cause.

The Commissioner would be 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) would be considered complete.

Revocation of Licenses (Section 15)

The bill would provide 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 could 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 would be required to demonstrate that it meets or will meet the requirements of the Act.

Completeness of Applications (Section 16)

The Commissioner would have the discretion to determine the completeness of any application submitted pursuant to the Act. In making such a determination, the

Commissioner would consider the applicant's compliance with the requirements of the Act and any other facts and circumstances that 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 would be deemed abandoned and the application fee would be nonrefundable. An applicant whose application is abandoned under the Act could reapply to obtain a new license.

Transfer of License Control (Section 17)

When any person or group of persons acting in concert are seeking to acquire control of a licensee, the bill would require the licensee to obtain the written approval of the Commissioner prior to the change of control. An individual would not be deemed to acquire control of a licensee and would not be subject to this section 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 would submit an application in the form and manner prescribed by the Commissioner. The application would be accompanied by a nonrefundable fee set by the Commissioner.

Upon request, the Commissioner could 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 would include all required information for any new key individuals who have not previously completed the requirements of the application.

When an application for acquisition of control appears to include all the items and addresses all of the required

matters, the application would be deemed complete and the Commissioner would promptly notify the applicant of the date on which the application was so deemed, and the Commissioner would 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 would be deemed approved; and
- The person or group of persons acting in concert would not be prohibited from acquiring control.

The Commissioner could extend the application period for good cause.

A determination by the Commissioner that an application is complete and is accepted for processing would mean only that the application, on its face, appears to include all of the items and addresses all required matters. A determination of completion by the Commissioner would 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 would 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 would 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 would be 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 would be authorized to investigate the applicant pursuant to the Act and the time frames established by agreement through the multistate licensing process.

The Commissioner would 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 would state in the notice of denial the specific reasons for the denial. An applicant whose application is denied by the Commissioner could appeal within 14 days and request a hearing in accordance with the Kansas Administrative Procedure Act.

Requirements in the Act to obtain the written approval of the Commissioner or submit an application to the Commissioner prior to change of control (Section 17) would not apply to any of the following:

- A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of the voting shares or

voting interests of a licensee or a person in control of a licensee;

- A person that acquires control of a licensee by devise or descent;
- A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee or as an officer appointed by a court of competent jurisdiction or by operation of law;
- A person that has complied with and received approval to engage in money transmission under this Act or was identified as a person in control in a prior application filed with and approved by the Commissioner or by a money service business-accredited state pursuant to a multistate license process, if:
 - The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;
 - The person is a licensee, the person is well-managed and has received at least a satisfactory rating for compliance at the person's most recent examination by a money service business accredited state if such rating was given;
 - The licensee to be acquired is expected to meet the requirements regarding prudential standards (Sections 32, 33, and 34), after the acquisition of control is completed. If the person acquiring control is a licensee, the licensee would also be expected to meet the requirements of the prudential standards outlined in the bill after the acquisition of control is completed;

- The licensee to be acquired could not implement any material changes to the licensee's business plan as a result of the acquisition of control. If the person acquiring control is a licensee, the licensee would not implement any material changes to the licensee's business plan as a result of the acquisition of control; and
- The person provides notice of the acquisition in cooperation with the licensee and attests to the provisions of this subsection in a form and manner prescribed by the Commissioner;
- A person that the Commissioner determines is not subject to written approval of the Commissioner based on the public interest;
- A public offering of securities of a licensee or a person in control of a licensee; or
- An internal reorganization of a person in control of the licensee if the ultimate person in control of the licensee remains the same.

Persons meeting the following requirements in cooperation with the licensee would notify the Commissioner within 15 days after the acquisition of control:

- A person that acquires control of a licensee by devise or descent;
- A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee or as an officer appointed by a court of competent jurisdiction or by operation of law;
- A person that has complied with and received approval to engage in money transmission under this Act or was identified as a person in control in a

prior application filed with and approved by the Commissioner or by a money service business-accredited state pursuant to a multistate license process and has met certain requirements;

- A public offering of securities of a licensee or a person in control of a licensee; or
- An internal reorganization of a person in control of the licensee if the ultimate person in control of the licensee remains the same.

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 and 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 would 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 would be 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 would be 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 (Section 18)

Under the bill, a license adding or replacing a key individual would be required to provide:

- Notice in the manner prescribed by 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 was determined to be complete, the Commissioner could 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 would be required to state the basis for disapproval and would be sent to the licensee and the disapproved individual. A licensee would be able to appeal a notice of disapproval pursuant to the Kansas Administrative Procedure Act within 14 days.

If the notice provided is not disapproved within 90 days after the date when the notice was determined to be complete, the key individual would 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 would be 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 would be authorized to investigate the applicant and pursuant to the Act and the time frames established by agreement through the multistate licensing process.

Report of Condition (Section 19)

Each licensee would be 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 would require 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 would authorize the Commissioner to utilize the NMLS for the submission of the report and would be authorized 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 (Section 20)

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 would file with the Commissioner:

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

The audited financial statements would include or be accompanied by 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 would be 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 (Section 21)

Each licensee would be required to submit a report of authorized delegates within 45 days of the end of each calendar quarter. The Commissioner would be 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 would require the authorized delegate report to include, at a minimum, each authorized delegate's:

- Company legal name;
- Taxpayer employer identification number;
- Principal provider identifier;
- Physical address;
- Mailing address;
- Any business conducted in other states;
- Any fictitious or trade name;
- Contact person's name, phone number, and email;
- Start date as the licensee's authorized delegate;
- End date acting as the licensee's authorized delegate, if applicable; and
- Any other information the Commissioner reasonably requires regarding the authorized delegate.

Reports of Action Against the Licensee (Section 22)

The bill would require 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 would 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 (Section 23)

The bill would require 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 would deem a timely filing of such complete and accurate report with the appropriate agency to be in compliance with the requirements of this section.

Maintenance of Records (Section 24)

Under the bill, every licensee would be required to maintain the following records for at least three years:

- A record of each outstanding money transmission obligation sold;
- A general ledger posted at least monthly containing all assets, liability, capital, income, and expense accounts;
- Bank statements and bank reconciliation records;
- Records of all outstanding money transmission obligations;
- Records of each outstanding money transmission obligation paid within the three-year period the records are maintained;
- A list of the last-known names and addresses of all the licensee's authorized delegates; and

- Any other records the Commissioner reasonably requires in rules and regulations.

The bill would allow the above-listed records to be maintained in any form and maintained outside the state, if the records are made accessible to the Commissioner on seven business day's notice. These required records maintained by the licensee would be open to inspection by the Commissioner pursuant to provisions that detail the examination options available to the Commissioner (Section 5).

Requirements to Conduct Business Through an Authorized Delegate (Section 25)

As it pertains to the requirements of this section regarding business conducted through an authorized delegate, the bill would define "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 would require 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 below; 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.

The bill would require an authorized delegate to comply with the Act.

Written Contract Requirements

The bill would require 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, do the following:

- Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;
- Set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of each party;
- Require the authorized delegate to agree to fully comply with all applicable state and federal laws and rules and regulations pertaining to money transmission;
- Require the authorized delegate to remit and handle money and any monetary value according to the terms of the contract between the licensee and the authorized delegate;
- Impose a trust on money and any monetary value net of fees received for money transmission for the benefit of the licensee;
- Require the authorized delegate to prepare and maintain records as required by the Act or rules and regulations adopted pursuant to this Act or as reasonably required by the Commissioner;

- Acknowledge that the authorized delegate consents to examination or investigation by the Commissioner;
- State that the licensee is subject to regulation by the Commissioner and, as part of such regulation, the Commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and
- Acknowledge receipt of the written policies and procedures designed to ensure that the licensee's authorized delegates comply with applicable state and federal law as required when conducting business with an authorized delegate.

Notice of Licensee's License Status

Within five business days after the suspension, revocation, surrender, or expiration of a licensee's license, a licensee would be required to provide documentation to the Commissioner that the licensee notified all of the licensee's applicable authorized delegates who are in the record filed with the Commissioner of such action on the licensee's license. All applicable authorized delegates would be required to 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 would require 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 would 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 would be prohibited from using a subdelegate to conduct money transmission on behalf of a licensee.

Money Transmission on Behalf of an Unlicensed or Nonexempt Person (Section 26)

The bill would prohibit 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 a licensee and would be jointly and severably liable with the unlicensed or nonexempt person.

Forwarding of Money Received for Transmission (Section 27)

The bill would require 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 would require 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 (Section 28)***

The following exceptions would 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.

Refund Exceptions

Within ten days of receipt of the sender's written request for a refund of all money received for transmission, the licensee would be required to refund such money to the sender, unless:

- The money has been forwarded within ten days of the date when the money was received for transmission;
- Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date when the money was received for transmission;
- The agreement between the licensee and the sender instructs the licensee to forward the money after ten days of the date when the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the bill would require the licensee to issue a refund in accordance with this section; or
- The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime

or violation of law, or rules and regulations has occurred, is occurring, or may occur.

The refund request would 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.

Receipt for Money Received for Transmission (Section 29)

The requirement that a receipt for money received for transmission be provided to the sender would 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 this section, the bill would define "receipt" to mean a paper or electronic receipt.

For a transaction conducted in person, the bill would allow 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 would allow the receipt to be provided electronically. The bill

would require all electronic receipts to be provided in retainable form.

Every licensee or the licensee's authorized delegate would be required to provide the sender a receipt for money received for transmission. The bill would require the receipt to contain the:

- Name of the sender;
- Name of the designated recipient;
- Date of the transaction;
- Unique transaction or identification number;
- Name of the licensee, the licensee's NMLS unique identification number, the licensee's business address, and the licensee's customer service telephone number;
- Amount of the transaction in U.S. dollars;
- Fee charged, if any, by the licensee to the sender for the transaction; and
- Taxes collected, if any, by the licensee from the sender for the transaction.

The bill would require 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 (Section 30)

Every licensee or authorized delegate would be required to 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 (Section 31)

A licensee that provides payroll processing services would be 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 would 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 (Section 32)

The bill would require 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 of over \$1.0 billion.

The bill would require 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 (Section 10).

Despite the provisions of this section, the bill would grant the Commissioner the authority to exempt any applicant or licensee, in part or in whole, from the requirements of this section.

Security Requirement (Section 33)

The bill would require an applicant for a money transmission license to provide and a licensee at all times 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 in accordance with this section.

The following amount of security would be required:

- The greater of \$200,000 or an amount equal to 100 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 percent of total assets.

If a licensee maintains a bond in the maximum amount provided for above, the licensee would not be required to calculate its average daily money transmission liability in Kansas for purposes of this section.

The bill would allow a licensee to exceed the maximum required bond amount pursuant to Section 35, which lists the types of permissible investments a licensee may hold.

Permissible Investment Requirements (Section 34)

The bill would require a licensee to maintain permissible investments with a market value computed according to United States 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 permissible investments (outlined in Section 35), the bill would allow 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 would authorize 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 would also authorize 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 would require 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 in the following circumstances:

- The event of insolvency;
- The filing of a petition by or against the licensee under general provisions in federal law pertaining to bankruptcy or reorganization;
- The filing of a petition by or against the licensee for receivership;
- The commencement of any other judicial or administrative proceeding for such licensee's dissolution or reorganization; or

- The event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust.

The bill would prohibit permissible investments impressed with a trust, as described above in this subsection, to be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

When a statutory trust is established in accordance with the above subsection or when any funds are drawn on a letter of credit (Section 35), the bill would require 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. 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 would be deemed by the bill 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 would require any statutory trust established under this section to be terminated when all of the licensee's outstanding money transmission obligations have been extinguished.

Types of Permissible Investments (Section 35)

The following investments would be considered permissible under this section:

- 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 clearing house items in transit to the licensee and automated clearing house 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;
- 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 would provide:

- 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 not being extended, the bill would provide 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

would provide that the drawn funds would be held in trust by the Commissioner or the Commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations;

- The issuer of such letter of credit would 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 of a bankruptcy or reorganization petition by or against the licensee; the filing of a petition by or against the licensee 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 issued in accordance with applicable law, 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. The Commissioner's agent could serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes outlined in the bill (Section 35) are assigned to 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 state regulatory registry, LLC; and
- 100 percent of the surety bond provided for under 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 would provide that the following investments would be 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.

Under the bill, the following investments would be permissible up to 20 percent per category and up to 50

percent combined of the aggregate value of the licensee's total permissible investments:

- A short-term investment of up to six months, bearing an eligible rating;
- Commercial paper bearing an eligible rating;
- A bill, note, bond, or debenture bearing an eligible rating;
- U.S. tri-party repurchase agreements collateralized at 100 percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;
- Money market mutual funds rated less than AAA and equal to or higher than A- by Standard & Poor or the equivalent from any other eligible rating service; and
- A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subsection (a) (1) through (3) (*i.e.* cash, certain certificates of deposit, or an obligation of a U.S. government entity), which would not include the full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the Commissioner.

Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions would 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 (Section 36)

After notice and an opportunity for a hearing under the Kansas Administrative Procedure Act, the bill would authorize 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 could 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 (Section 37)

The bill would authorize 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;
- Authorized delegate did not cooperate with an examination or investigation by the Commissioner;

- Authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;
- Authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;
- Competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or
- Authorized delegate is engaging in an unsafe or unsound practice as determined by the Commissioner.

In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the Commissioner could consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this act or any rules and regulations adopted or an order issued under this act, and the previous conduct of the authorized delegate.

An authorized delegate could 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 (Section 38)

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 that a 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 could

issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order would become effective upon service of the order on the licensee or authorized delegate.

The Commissioner could 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 Kansas Administrative Procedure Act. 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 (Section 39)

The bill would authorize 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 would require 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. A consent order could provide that the consent order would not constitute an admission by a person that the Act or rules and regulations adopted or an order issued under the Act had been violated.

Criminal Penalties (Sections 40)

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;
- 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; 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 not more than \$500 in compensation within a 30-day period from this activity would be guilty of a class A nonperson misdemeanor.

Civil Penalties (Section 41)

The bill would authorize the Commissioner, as part of any summary order or consent order, to impose the following civil penalties:

- Assess a fine against any person that violates the Act or any rules and regulations adopted pursuant to the Act in an amount not to exceed \$5,000 per violation. The bill would allow the Commissioner to designate any fine collected pursuant to this section be used for consumer education;
- Assess the agency's operating costs and expenses for investigating and enforcing the Act;

- Require the person to pay restitution for any loss arising from the violation or requiring the person to reimburse any profits arising from the violation;
- Prohibit the person from future application for licensure pursuant to the Act; and
- Require such affirmative action as determined by the Commissioner to carry out the purposes of the Act.

Informal Agreement

The bill would authorize 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 would be considered confidential examination material.

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

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

The provisions of this subsection providing for the confidentiality of public records would 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 would allow 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 could designate any fine collected pursuant to this section be used 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 (Section 42)

The provisions of the Act would be severable. If any portion of the Act would be declared unconstitutional or invalid, or the application of any portion of the Act to any person or circumstance would be 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.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Office of the State Bank Commissioner (OSBC).

[*Note:* The current Kansas Money Transmitter Act was created by 2006 HB 2874 and is codified in the State Banking Code at KSA 9-508 *et seq.*

This bill largely incorporates the CSBS Model Money Transmission Modernization Act (“Money Transmitter Model Act” or MTMA) into Kansas law. According to the CSBS, 14 states have adopted the MTMA in full or in part and another 17 are expected to pursue its adoption in 2024.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the OSBC and Money Services Business Association. The representatives generally stated the new act would better reflect the industry today and codifies many changes in examination and licensing procedures that have occurred in the past few years. The representatives stated the proposed revisions and additions would modernize existing Kansas regulations by increasing efficiency in the licensing and ongoing supervision of money transmitter licensees operating in multiple jurisdictions.

Written-only proponent testimony was provided by representatives of the Electronic Transactions Association and The Money Services Round Table.

No other testimony was provided.

The Senate Committee amended the bill to add a person engaging in the practice of law, bookkeeping, accounting, real estate sales, or brokerage to the list of entities exempted from the Act.

House Committee on Financial Institutions and Pensions

In the House Committee hearing, **proponent** testimony was provided by a representative of the OSBC, who stated that this modernization bill would codify certain practices that are already in place and would help make the regulation of money transmission consistent across state lines.

Neutral testimony was provided by a representative of the Independent Payroll Providers Association and The Payroll Group, who requested an amendment to exempt certain payroll processors.

No other testimony was provided.

The House Committee amended the bill to add a person appointed as an agent of a payor (*i.e.*, agency payroll processors) to the list of entities exempted from the Act.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the OSBC indicates the bill only modernizes the Kansas Money Transmitter Act, and the agency would use existing resources to implement the bill. The Sentencing Commission indicates the bill could have an effect on prison admissions, bed space, and workload of the Commission; however, any fiscal effect would be negligible. Based on the Kansas Sentencing Commission estimates, the Department of Corrections indicates that any increase in the prison population resulting from the bill would be absorbed within the Department's existing resources. The Office of Judicial Administration indicates it would implement the bill using existing resources.

The Kansas Association of Counties and the League of Kansas Municipalities state the bill would not have a fiscal effect on the counties and cities.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Financial institutions; Kansas Money Transmission Act; State Bank Commissioner; licensure; civil penalties; criminal penalties; disciplinary action; money transmission; permissible investments; rules and regulations; exemptions