

Banking Code Amendments—Kansas Money Transmitter Act; Fingerprinting, Certain Applicants; Appointments in the Unclassified Service; House Sub. for SB 315

House Sub. for SB 315 amends several provisions in the State Banking Code, including provisions in the Kansas Money Transmitter Act to revise and update certain terms, establish an adjustable fee schedule, regulate unlicensed activity, update the acts subject to disciplinary action by the State Bank Commissioner (Commissioner), and authorize the fingerprinting and completion of a criminal background check for persons related to an application for a money transmitter license; to permit the Commissioner or State Banking Board (Board) to require fingerprinting and completion of a criminal background check for certain individuals related to filing of a notice for a proposed acquisition of a bank by a trust company, and application for a new trust company; and to allow the Commissioner to establish an equitable salary schedule for all unclassified positions (positions established by the bill), and allow the Commissioner to appoint certain positions in the unclassified service.

Updates to the Kansas Money Transmitter Act

The bill adds the definition of “agent” to the Kansas Money Transmitter Act (Act); the term means “an entity or person designated by the licensee, or by an exempt entity, to engage in the business of transmitting money on behalf of the licensee, or an exempt entity, at one or more physical locations throughout the state or through the internet.” The bill also revises the definition of “permissible investments” to delete certain investment types, revise current investment types, and insert additional investment types including:

- Deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposits;
- Debt obligations of a domestic federally insured depository institution;
- Any investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates such securities;
- Investment grade bonds and other legally created general obligations of a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the United States; and
- Obligations that a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee; and that bear a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

The bill also updates the definition of the term “person.”

Fee Structure

The bill deletes a provision that allowed the license application fee to be established by agency rules and regulations. Instead, the bill allows the Commissioner to prescribe the form

and manner for submission of the application. A nonrefundable fee for each agent and location, as established by the Commissioner, will be required to be submitted with the application and will be due annually on July 1. The Commissioner is authorized to determine the amount of the fees, in order to provide sufficient funds to meet the budget requirements associated with administering and enforcing the Act for each fiscal year. "Each agent location" is defined by the bill to mean "each physical location within the state where money transmission is conducted, including, but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes."

A license must be renewed by filing with the Commissioner a complete application and nonrefundable fees at least 30 days prior to expiration of the license.

Investigatory Powers

In addition to an existing authority to examine books and records of persons operating in accordance with the Act, the bill grants the Commissioner the authority, for the purposes of investigation, examination, or other proceeding under the Act, to administer oaths, subpoena witnesses and documents, take evidence, and require the production of any document that is determined to be relevant to the inquiry.

Enforcement Authority; Violations of the Act; Unlicensed Activity

The bill also grants the Commissioner the power to issue an order to address any violation of the Act by:

- Assessing a fine against any person who violates the Act, or rules and regulations adopted thereto, in an amount not to exceed \$5,000 per violation;
- Assessing the agency's operating costs and expenses for investigating and enforcing the Act;
- 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;
- Barring the person from future application for licensure pursuant to the Act; and
- Requiring such affirmative action as in the judgment of the Commissioner which will carry out the purposes of the Act.

The Commissioner will be permitted to enter into a consent order at any time with a person to resolve a matter arising under the Act, rules and regulations adopted thereto, or an order issued pursuant to the Act.

The bill also allows the Commissioner to bring an action for injunctive relief to enjoin a violation (or a likely violation of the Act) or enforce compliance, regardless of whether criminal proceedings have been instituted. Any person engaging in activities that are regulated and require licensure under the Act will be considered to have consented to the jurisdiction of the courts of this state for all actions arising under the Act.

Disciplinary Action; License Revocation

The bill expands the list of prohibited actions under the Act that could result in license revocation to include:

- Filing a document or statement falsely representing or omitting a material fact;
- Concealing a fact or a condition exists which would clearly have justified the Commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for license was made;
- Engaging in any transaction, practice, or business conduct that is fraudulent and deceptive in connection with the business of money transmission;
- Advertising, displaying, broadcasting, or televising any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for the transmission of money;
- Failing to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the Commissioner the licensee's compliance with the provisions of the Act; or
- Being the subject of any disciplinary action by this or any other state or federal agency.

The list of other prohibited acts also includes instances where a final judgment has been entered against the person in a civil action and the Commissioner finds the conduct (subject of the judgment) indicates it would be contrary to the public interest to permit the person to be licensed or, in instances where the person has violated any order issued by the Commissioner, any provision of the Act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission.

Examination Reports

The bill permits the Commissioner to accept an examination report or investigation report from another state or federal licensing agency, in which the accepted report is an official report of the Commissioner. Acceptance of the report, however, will not waive any fee required by the Act.

Technical Corrections; Reorganization

The bill makes several technical amendments, including the reorganization of provisions in the existing Act.

Fingerprinting and Criminal History Record Checks of Certain Money Transmitters and Certain Trust Company Applicants

The bill amends the Act to permit the Commissioner to require fingerprinting of any individual, officer, director, partner, member, shareholder, or any other person related to the application deemed necessary by the Commissioner. The bill exempts any applicant who is a publicly traded corporation or a subsidiary of a publicly traded corporation from the fingerprint check.

The bill also allows, in instances where notice is given for the acquisition of a bank by a trust company, the Commissioner the authority (permissive) to require fingerprinting of any proposed officer, director, shareholder, or any other person deemed necessary by the Commissioner.

The bill permits the Board to require fingerprinting of any officer, director, incorporator, or any other person of the proposed trust company related to the application deemed necessary by the Board.

The bill allows the submission of an applicant's fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national criminal history record check. The fingerprints are to be used for the purposes of identifying the person and determining whether the person has a record of arrests and convictions in Kansas or other jurisdictions. The Commissioner or Board is permitted to use this information for the purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person or, in the case of a trust company, the persons associated with either the notice of acquisition of a trust company or the applicant trust company to be issued a charter. The bill requires that all costs associated with the fingerprinting and criminal background checks be paid by the applicant or the parties to the application.

Unclassified Service; Salary Schedule - Office of the State Bank Commissioner

The bill adds attorneys, officers, and employees of the Office of the State Bank Commissioner to the list of employees in the unclassified service not subject to the approval of the Governor. The bill also grants the Commissioner authority to appoint certain positions in the unclassified service, subject to appropriations. Those positions include case managers, examiners, and a business manager within the Office of the State Bank Commissioner. Under prior law, the Commissioner was allowed to appoint only regional managers and financial examiner administrators.

The bill also allows the Commissioner to establish an equitable salary schedule for all unclassified positions. The average of the salaries established by the Commissioner, however, will not be permitted to exceed the average compensation of corresponding state regulatory positions in similar areas. Under the bill, the salary schedule must be reported to the Board on an annual basis.

The bill will be in effect upon publication in the *Kansas Register*.