

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2793

As Amended by House Committee on Financial
Institutions

Brief*

HB 2793 would amend the Kansas Credit Services Organization Act to clarify an exemption provision in the Act. Specifically, the bill would modify an existing exemption from the Act for individuals licensed to practice law in Kansas acting within the course and scope of such individual's practice as an attorney. The bill also would add law firms to this exemption from the Act.

The term, "law firm", would be defined to mean "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization."

Under the current law, any person licensed to practice law in Kansas, when the person is acting within the course and scope of such person's practice as an attorney, is exempt from the Act.

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

Background

The Kansas Court of Appeals' decision in *Consumer Law Associates, LLC et al v. Stork* (No. 106,115) affirmed the District Court's decision that "individuals who are licensed to

*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>

practice law in Kansas are exempt from regulation by the OSBC (Office of the State Bank Commissioner). The OSBC exemption does not apply to a limited liability company or any other entity that is not licensed to practice law by the Kansas Supreme Court."

The bill was introduced by the House Appropriations Committee. Representatives of Persels & Associates, LLC testified in support of the bill at the House Financial Institutions Committee hearing. The bill, one of the conferees indicated, was necessitated by a recent Kansas Court of Appeals' decision that the conferees believe is contrary to legislative intent. One of the conferees cited the interpretation of the Act's exemption by the OSBC as "the exemption (in the Act) applies only to an individual attorney and not a law firm." This interpretation, the conferee continued, is central to an enforcement action against Persels and further, the ruling of the Shawnee County District Court (2011) that was sustained by the Kansas Court of Appeals' ruling (March 23, 2012) has material impact on all attorneys and law firms in Kansas. As a result, the conferee stated, this issue should be clarified by the Kansas Legislature before the actions of the OSBC are affirmed by a court of final jurisdiction. Written testimony in support of the bill was submitted by the Counsel for Persels & Associates, LLC and Consumer Law Associates, LLC (Redmond & Nazar, LLP) and the Managing Counsel for Hutton & Hutton Law Firm, LLC.

There were no opponents to the bill at the time of the House Committee hearing.

The House Committee on Financial Institutions amendment replaces references to "person" in the exemption for attorneys and, under the bill, law firms, with the term "individual."

The fiscal note prepared by the Division of the Budget states that the Office of the State Bank Commissioner indicates that the bill would have no fiscal effect.