

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2216

By Committee on Financial Institutions

2-3

1 AN ACT concerning banks and banking; relating to the Kansas money
2 transmitter act; amending K.S.A. 2014 Supp. 9-508, 9-509, 9-510, 9-
3 513a and 9-513b and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 Supp. 9-508 is hereby amended to read as
7 follows: 9-508. As used in this act:

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

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

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

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

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

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

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

34 (h) "money transmission" means to engage in the business of the sale
35 or issuance of payment instruments or of receiving money or monetary
36 value for transmission to a location within or outside the United States by

1 wire, facsimile, electronic means or any other means, except that money
2 transmission does not include currency exchange where no transmission of
3 money occurs;

4 (i) ~~"outstanding payment instrument" means any payment instrument~~
5 ~~issued by the licensee which has been sold in the United States directly by~~
6 ~~the licensee or any money order or instrument issued by the licensee which~~
7 ~~has been sold by an agent of the licensee in the United States, which has~~
8 ~~been reported to the licensee as having been sold and which has not yet~~
9 ~~been paid by or for the licensee~~ "outstanding payment liability" means:

10 (1) *With respect to a payment instrument, any payment instrument*
11 *issued or sold by the licensee which has been sold in the United States*
12 *directly by the licensee, or any payment instrument that has been sold by*
13 *an agent of the licensee in the United States, which has been reported to*
14 *the licensee as having been sold and which has not yet been paid by or for*
15 *the licensee;*

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

20 (j) "payment instrument" means any electronic or written check,
21 draft, money order, travelers check or other electronic or written
22 instrument or order for the transmission or payment of money, sold or
23 issued to one or more persons, whether or not such instrument is
24 negotiable. The term "payment instrument" does not include any credit
25 card voucher, any letter of credit or any instrument which is redeemable by
26 the issuer in goods or services;

27 (k) "permissible investments" means:

28 (1) Cash;

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

31 (3) debt obligations of a domestic federally insured depository
32 institution;

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

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

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

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

6 (8) receivables that are payable to a licensee, in the ordinary course of
7 business, pursuant to contracts which are not past due and which do not
8 exceed in the aggregate 40% of the total required permissible investments
9 pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past
10 due if not remitted to the licensee within 10 business days; or

11 (9) any other investment or security device approved by the
12 commissioner;

13 (l) "person" means any individual, partnership, association, joint-
14 stock association, trust, corporation or any other form of business
15 enterprise;

16 (m) "resident" means any natural person or business entity located in
17 this state; and

18 (n) "tangible net worth" means the physical worth of a licensee,
19 calculated by taking a licensee's assets and subtracting its liabilities and its
20 intangible assets, such as copyrights, patents, intellectual property and
21 goodwill.

22 Sec. 2. K.S.A. 2014 Supp. 9-509 is hereby amended to read as
23 follows: 9-509. (a) No person shall engage in the business of selling,
24 issuing or delivering its payment instrument, check, draft, money order,
25 personal money order, bill of exchange, evidence of indebtedness or other
26 instrument for the transmission or payment of money or otherwise engage
27 in the business of money transmission with a resident of this state, or,
28 except as provided in K.S.A. 9-510, and amendments thereto, act as agent
29 for another in the transmission of money as a service or for a fee or other
30 consideration, unless such person files an application and obtains a license
31 from the commissioner.

32 (b) Each license shall expire December 31 of each year. A license
33 shall be renewed by filing with the commissioner a complete application
34 and nonrefundable application fee at least 30 days prior to expiration of
35 the license. Expired licenses may be reinstated through February 28 of
36 each year by filing a reinstatement application and paying the appropriate
37 application and late fees.

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

1 commissioner at least 60 days prior to the acquisition.

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

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

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

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

41 (B) The commissioner may use information obtained from
42 fingerprinting and the criminal history for purposes of verifying the
43 identification of the person and in the official determination of the

1 qualifications and fitness of the person, or in the case of an applicant
2 company, the persons associated with the company.

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

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

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

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

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

31 (2) such person shall deposit and at all times keep on deposit with ~~the~~
32 ~~state treasurer, or~~ a bank in this state approved by the commissioner, cash
33 or securities satisfactory to the commissioner in an amount not less than
34 \$200,000. The commissioner may increase the amount of cash or securities
35 required up to a maximum of ~~\$500,000~~ \$1,000,000 upon the basis of ~~the~~
36 ~~impaired financial condition of a person, as evidenced by a reduction in~~
37 ~~net worth, financial losses or other relevant criteria as determined by the~~
38 ~~commissioner.~~

39 (A) *The volume of money transmission business transacted in this*
40 *state by such person;* or

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

43 (3) in lieu of the deposit of cash or securities required by ~~paragraph~~

1 ~~(B)~~ *this subsection*, such person may give a surety bond in an amount
2 equal to that required for the deposit of cash or securities, in a form
3 satisfactory to the commissioner and issued by a company authorized to do
4 business in this state, which bond shall be payable to the office of the state
5 bank commissioner and be filed with the commissioner; and

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

9 (f) The deposit of cash, securities or surety bond required by this
10 section shall be subject to:

11 (1) Payment to the commissioner for the protection and benefit of
12 purchasers of money transmission services, purchasers or holders of
13 payment instruments furnished by such person, and those for whom such
14 person has agreed to act as agent in transmission of monetary value and to
15 secure the faithful performance of the obligations of such person in respect
16 to the receipt, handling, transmission and payment of monetary value; and

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

20 (g) The aggregate liability of the surety for all breaches of the
21 conditions of the bond, in no event, shall exceed the amount of such bond.
22 The surety on the bond shall have the right to cancel such bond upon
23 giving 30 days' notice to the commissioner and thereafter shall be relieved
24 of liability for any breach of condition occurring after the effective date of
25 the cancellation. The commissioner or any aggrieved party may enforce
26 claims against such deposit of cash or securities or surety bond. So long as
27 the depositing person is not in violation of this act, such person shall be
28 permitted to receive all interest and dividends on the deposit and shall
29 have the right to substitute other securities satisfactory to the
30 commissioner. If the deposit is made with a bank, any custodial fees shall
31 be paid by such person.

32 (h) (1) The commissioner shall have the authority to examine the
33 books and records of any person operating in accordance with the
34 provisions of this act, at such person's expense, to verify compliance with
35 state and federal law.

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

40 ~~(2)~~ (3) For purposes of investigation, examination or other proceeding
41 under this act, the commissioner may administer or cause to be
42 administered oaths, subpoena witnesses and documents, compel the
43 attendance of witnesses, take evidence and require the production of any

1 document that the commissioner determines to be relevant to the inquiry.

2 (i) Except as authorized with regard to the appointment of agents, a
3 licensee is prohibited from transferring, assigning, allowing another person
4 to use the licensee's license, or aiding any person who does not hold a
5 valid license under this act in engaging in the business of money
6 transmission.

7 Sec. 3. K.S.A. 2014 Supp. 9-510 is hereby amended to read as
8 follows: 9-510. A licensee may engage in the business of money
9 transmission at one or more locations in this state and through or by means
10 of such agents as such licensee may designate and appoint from time to
11 time subject to the following provisions:

12 ~~(1)~~ (a) No agent of a licensee shall be required to comply with the
13 licensing provisions of this act.

14 ~~(2)~~ (b) Only a licensee may designate an agent, ~~except no licensee~~
15 ~~may designate an agent that is not physically located in this state without~~
16 ~~prior approval from the commissioner.~~ **A licensee must obtain prior**
17 **approval from the commissioner to designate an agent that conducts**
18 **money transmission business through the internet without a physical**
19 **location in this state.**

20 ~~(A)~~ (c) No agent shall appoint a subagent.

21 ~~(B)~~ No person acting as an agent for an exempt entity shall be exempt
22 from the licensing provisions of this act.

23 ~~(3)~~ A person accepting a consumer's funds for transmission through
24 an exempt entity is a money transmitter and subject to the provisions of
25 this act.

26 (d) *A person acting as an agent for an exempt entity or any other*
27 *person accepting funds for transmission through an exempt entity is a*
28 *money transmitter and subject to the provisions of this act.*

29 ~~(4)~~ (e) In conjunction with filing a renewal application, each
30 applicant shall provide in the form and manner prescribed by the
31 commissioner a complete list of its proposed or existing agents. At the end
32 of each calendar quarter each licensee shall provide in the form and
33 manner prescribed by the commissioner any additions or deletions in the
34 licensee's agents.

35 ~~(5)~~ (f) A written contract between a licensee and agent shall be
36 maintained for inspection by the commissioner upon request and the
37 written contract must contain provisions to the following effect:

38 ~~(A)~~ (1) The agent must operate in full compliance with this act and
39 the rules and regulations adopted thereunder.

40 ~~(B)~~ (2) The agent is prohibited from using subagents or conducting
41 money transmission business from locations that have not been approved
42 by the licensee.

43 ~~(C)~~ (3) A description of the specific money services the licensee has

1 permitted the agent to perform on behalf of the licensee.

2 ~~(6)~~ (g) The agent may only conduct activities authorized by the
3 licensee in the written agreement, unless the agent is also a licensee.

4 ~~(7)~~ (h) A licensee may contract with another licensee to use that other
5 licensee's existing authorized agents only for the purpose of loading funds
6 onto existing prepaid access cards. The licensee with the direct contractual
7 relationship with the agents shall record the transactions as such licensee's
8 own. If a shared agent sells new prepaid access cards on behalf of the
9 licensee, then such licensee must directly contract with the agent and
10 comply with all other requirements for designating an agent.

11 Sec. 4. K.S.A. 2014 Supp. 9-513a is hereby amended to read as
12 follows: 9-513a. The commissioner, after notice and an opportunity for a
13 hearing, may deny, suspend, revoke or refuse to renew a license issued
14 pursuant to this act, or issue a cease and desist order if the commissioner
15 finds any of the following are applicable to any person who is required to
16 be licensed under this act or such person's agent:

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

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

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

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

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

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

36 (g) there has been entry of a federal or state administrative order
37 against the person for violation of any rule and regulation applicable to the
38 conduct of the person's money transmission business;

39 (h) the person refused to *provide information requested by the*
40 *commissioner or refused to permit an examination or investigation by the*
41 *commissioner;*

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

43 (j) the person has engaged in any transaction, practice or business

1 conduct that is fraudulent or deceptive in connection with the business of
2 money transmission;

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

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

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

11 (n) a final judgment has been entered against the person in a civil
12 action and the commissioner finds the conduct on which the judgment is
13 based indicates that it would be contrary to the public interest to permit
14 such person to be licensed; ~~or~~

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

18 (p) *the person has refused or otherwise failed to provide, after a*
19 *reasonable time as determined by the commissioner, any information*
20 *necessary to approve or renew an application or license issued pursuant*
21 *to this act.*

22 Sec. 5. K.S.A. 2014 Supp. 9-513b is hereby amended to read as
23 follows: 9-513b. (a) Each licensee under this act shall at all times possess
24 permissible investments having an aggregate market value, calculated in
25 accordance with *United States* generally accepted accounting principles, of
26 not less than the aggregate amount of ~~all~~ *the* outstanding payment
27 ~~instruments issued or sold~~ *liability held* by the licensee in the United
28 States. This requirement may be waived by the commissioner if the dollar
29 volume of a licensee's outstanding payment ~~instruments~~ *liability* does not
30 exceed the bond or other security devices posted by the licensee pursuant
31 to K.S.A. 9-509, and amendments thereto.

32 (b) *In the event of the bankruptcy of the licensee, the* permissible
33 investments shall be deemed by operation of law to be held in trust for the
34 benefit of ~~the purchasers and holders of the licensee's outstanding payment~~
35 ~~instruments in the event of the bankruptcy of the licensee~~ *all persons*
36 *whose money or monetary value is considered outstanding*, even if such
37 permissible investments are commingled with other assets of the licensee.

38 Sec. 6. K.S.A. 2014 Supp. 9-508, 9-509, 9-510, 9-513a and 9-513b
39 are hereby repealed.

40 Sec. 7. This act shall take effect and be in force from and after its
41 publication in the statute book.