

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2216

As Amended by House Committee on Financial
Institutions

Brief*

HB 2216 would make several amendments to the Kansas Money Transmitter Act (KMTA), including updates to the definition of “agent” and licensure requirements associated with the relationship between an agent and licensee, replacing the definition of “outstanding payment instrument” with “outstanding payment liability” to create a distinction between payment instruments and money transmission considered to be outstanding, and providing the Bank Commissioner with authority to increase the required amount of surety on a licensee. Amendments to the KMTA are described below.

Definitions

The bill would update the definition of “agent” to mean “a person designated by a licensee to receive funds from a Kansas resident in order to forward such funds to the licensee to effectuate money transmission at one or more physical locations throughout the state or through the internet, regardless of whether such person would be exempt from the act by conducting money transmission on such person’s own behalf.”

The bill would replace the term “outstanding payment instrument” with “outstanding payment liability” which is defined to mean:

*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>

- With respect to a payment instrument, any payment instrument issued or sold by the licensee which has been sold in the United States directly by the licensee, or any payment instrument that has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee; and
- With respect to the transmission of money or monetary value, any money or monetary value the licensee or agent of the licensee has received from a customer in the United States for transmission which has not yet been delivered to the recipient or otherwise paid by the licensee.

The bill also would amend permissible investment provisions in the KMTA to make updates consistent with the new term “outstanding payment liability.”

Surety Requirements

The bill would amend surety requirements for licensure applicants. The bill would retain the requirement that any applicant must maintain cash or securities of at least \$200,000. Under current law, the Commissioner is permitted to increase the required cash and securities up to \$500,000. Under the bill, the Commissioner could increase this requirement for surety to a maximum of \$1,000,000. The Commissioner would be required to base this decision on the following factors: the volume of money transmission business transacted in the state; or the impaired financial condition of a licensee, as evidenced by a reduction in net worth or financial losses.

***Prior Approval—Appointment of Certain Agents Not
Physically Located in Kansas; Exempt Entities***

The bill would modify agent licensure requirements to specify a licensee must obtain prior approval from the Commissioner to designate an agent that conducts money transmission business through the internet without a physical location in Kansas. The bill also would provide that a person acting as an agent for an exempt entity or any other person accepting funds for transmission through an exempt entity is a money transmitter and subject to the KMTA.

Additional Requirements

The bill would require audited and interim financial statements associated with the filing of an application to be prepared in accordance with the United States Generally Accepted Accounting Principles (GAAP) or in any other form accepted by the Commissioner.

The bill also would permit the Commissioner to require any person operating in accordance with the provisions of the KMTA to maintain documents and records, as necessary, to verify compliance with the Act or any other applicable state or federal law or regulation.

The bill would authorize the Commissioner to take administrative action on a licensee to modify one existing finding and create a new finding related to the refusal or failure to provide, after a reasonable time, any information necessary to approve or renew a license.

Background

The bill was introduced in the House Committee on Financial Institutions by Representative Kelly at the request of the Office of the State Bank Commissioner (OSBC). At the hearing in the House Committee on Financial Institutions, the

Staff Attorney for the OSBC cited rapid changes of technology and the increasing amount of money transmission being conducted electronically and through the internet as reasons for regular updates to the KMTA. The bill would clarify the licensee-agent relationship, the conferee noted, as some newer internet companies have been exploiting the ability to appoint another entity to act on behalf of the licensee (in the more traditional relationship, a company might appoint a convenience store to act as an agent on its behalf) in order to run a separate money transmitter business and avoid licensure themselves. The inclusion of a definition for “outstanding payment liabilities” would ensure that online and other licensed entities that are transmitting money electronically accurately report their outstanding payments. There was no other testimony presented at the House Committee hearing.

The House Committee amendment modified a provision in the bill relating to designation of agents not physically located in the state to specify the required prior approval by the Commissioner would apply to agents conducting money transmission business through the internet.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OSBC indicates the costs associated with implementing the requirements of the bill would be negligible and could be absorbed within its existing budget.