

HOUSE BILL No. 2874

AN ACT relating to transmission of money; providing for the regulation thereof; amending K.S.A. 9-508, 9-509, 9-510, 9-511, 9-512 and 9-513 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. The provisions of K.S.A. 9-508 through 9-513, and amendments thereto, and sections 2 through 4, and amendments thereto, shall be known as and may be cited as the Kansas money transmitter act.

New Sec. 2. (a) The commissioner shall not issue a license unless the commissioner is of the opinion that the person will be able to and will perform its obligations to purchasers of money transmission services and purchasers, payees and holders of money orders sold by it and its agents, and that the financial responsibility, character, reputation, experience and general fitness of the person, its senior officers, directors and principal stockholders are such to warrant belief that the business will be operated efficiently, fairly and in the public interest.

(b) The commissioner may, after notice and an opportunity for a hearing, revoke a license if the commissioner finds:

(1) The person may be financially unable to perform its obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of its obligations related to the person's money transmission business;

(2) the person no longer meets a requirement for initial granting of a license;

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

(4) there has been entry of a federal or state administrative order against the person for violation of any law or any regulation applicable to the conduct of the person's money transmission business;

(5) a refusal by the person to permit an investigation by the commissioner;

(6) a failure to pay to the commissioner any fee required by this act; or

(7) a failure to comply with any order of the commissioner.

New Sec. 3. (a) Each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto.

(b) Permissible investments shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee even if such permissible investments are commingled with other assets of the licensee.

New Sec. 4. (a) Notwithstanding any other provision of law, all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

(b) The commissioner shall have the authority to share supervisory information, including examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(c) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(d) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(e) The provisions of subsection (a) shall expire on July 1, 2011, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2011.

Sec. 5. K.S.A. 9-508 is hereby amended to read as follows: 9-508. As used in this act, ~~the word “person” shall mean any individual, partnership, association, joint-stock association, trust, corporation, or any other form of business enterprise, authorized to do business in this state.:~~

(a) “Commissioner” means the state bank commissioner;

(b) “electronic instrument” means a card or other tangible object for the transmission or payment of money, including a stored value card or device which contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(c) “monetary value” means a medium of exchange, whether or not redeemable in money;

(d) “money transmission” means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by wire, facsimile, electronic means or any other means;

(e) “outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any money order or instrument issued by the licensee which 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;

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

(g) “permissible investments” means:

(1) Cash;

(2) certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers’ acceptances, which are eligible for purchase by member banks of the federal reserve system;

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

(5) investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any general obligations of any state, municipality or any political subdivision thereof;

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

(7) any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) receivables which are due to a licensee from its authorized agents pursuant to a contract, which are not past due or doubtful of collection; or

(9) any other investment or security device approved by the commissioner.

(h) “Person” means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise authorized to do business in this state; and

(i) “stored value” means monetary value that is evidenced by an electronic record.

Sec. 6. K.S.A. 9-509 is hereby amended to read as follows: 9-509. (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of

money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money in the face amount of a check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money; as a service or for a fee or other consideration, unless such person obtains a license from the commissioner.

(b) An application for a license shall be submitted on forms prescribed by the commissioner. The application shall be accompanied by an application fee as established by rules and regulations adopted by the commissioner. In addition, each person submitting an application shall meet the following requirements:

(a) (1) The net worth of such person is shall be at all times not less than ~~\$100,000~~ \$250,000, as shown by ~~a~~ an audited financial statement and certified to by an owner, a partner or officer of the corporation or other entity in a form prescribed by the ~~state bank~~ commissioner and filed in the commissioner's office. The commissioner may require any person to file a statement at any other time upon request;

(b) (2) such person ~~has deposited~~ shall deposit and at all times ~~keeps~~ keep on deposit with the state treasurer, or a bank in this state approved by the ~~state bank~~ commissioner, cash or securities satisfactory to the ~~state bank~~ commissioner in an amount of ~~\$50,000 plus an additional sum of \$5,000 for each location, in excess of one, at which such person proposes to conduct such business, but not to exceed \$200,000; and~~

(c) ~~such person submits a list to the commissioner of the names and addresses of the selling agents of such person. not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of \$500,000 upon the basis of the impaired financial condition of a person, as evidenced by a reduction in net worth, financial losses or other relevant criteria as determined by the commissioner;~~

(3) in lieu of ~~such~~ the deposit of cash or securities required by paragraph (2), such person may give a surety bond in an amount equal to that required for the deposit of cash or securities, in a form satisfactory to the ~~state bank~~ commissioner and issued by a company authorized to do business in this state, which bond shall ~~run to the state of Kansas be payable to the office of the state bank commissioner~~ and be filed with the ~~state bank~~ commissioner. The deposit of cash or securities or surety bond shall be for the protection and benefit of purchasers of money transmission services, purchasers or holders of payment instruments furnished by such person or for the protection of those for whom such person has agreed to act as agent in the transmission of ~~money~~ monetary value and to secure the faithful performance of the obligations of such person in respect to the receipt, handling, transmission and payment of ~~money~~ monetary value. The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The ~~state bank~~ commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the ~~state bank~~ commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person. ~~The financial statement shall be filed annually and at the time of filing each person shall pay to the state bank commissioner an annual fee in an amount established by rules and regulations adopted by the commissioner. The state bank commissioner may require any person to file a statement at more frequent intervals, but only the annual fee need be paid; and~~

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

(c) The ~~bank~~ commissioner shall have the ~~right~~ authority to examine the books and records of any person operating in accordance with the provisions of this act at such person's expense, and if it appears that such person's financial affairs are unsound so as to affect the solvency of such person's operations then the ~~bank~~ commissioner is authorized to obtain

~~a restraining order, or a temporary or permanent injunction without bond, in any court of competent jurisdiction so as to prevent such person, or any agents of such person, from continuing in business to verify compliance with state and federal law.~~

Sec. 7. K.S.A. 9-510 is hereby amended to read as follows: 9-510. Any person complying with the provisions of this act may engage in such business at one or more locations in this state and through or by means of such agents as such person may designate and appoint from time to time. A verified list of agents shall be furnished annually to the ~~bank~~ commissioner by persons operating hereunder, on a date prescribed by ~~said~~ the commissioner. No such agent shall be required to comply with the *licensing* provisions of this act.

Sec. 8. K.S.A. 9-511 is hereby amended to read as follows: 9-511. This act shall not apply to banks, building and loan associations, savings and loan associations, *savings banks* or credit unions organized under the laws of and subject to the supervision of this state, *another state* or the United States, or to the government of the United States and its agencies, or to the state of Kansas and its agencies. This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

Sec. 9. K.S.A. 9-512 is hereby amended to read as follows: 9-512. (a) Any person who *knowingly* violates any provision of this act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment *severity level 9, nonperson felony*. Each transaction in violation of this act and each day that a violation continues shall be a separate offense. ~~Provided, except~~ that whenever a corporation shall violate any provision of this act, such violation shall be deemed to be also that of the individual directors, officers, and agents of such corporation who shall have authorized, ordered, or done any of the acts constituting such violation in whole or in part. ~~And provided further, That~~

(b) A corporation and its ~~different~~ directors, officers, and agents may each be prosecuted separately for violations of this act and the acquittal or conviction of one such director, officer or agent shall not abate the prosecution of the others.

(c) Violations of this act also may be enjoined or the violators ousted from continuing such violations by proceedings brought by the county attorney of the proper county or by the attorney general, regardless of whether or not criminal proceedings have been instituted.

Sec. 10. K.S.A. 9-513 is hereby amended to read as follows: 9-513. (a) If any sentence, clause, provision or section of this act or the applicability thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the validity of the remainder of this act or its applicability to other persons or circumstances. It shall be presumed conclusively that the legislature would have enacted the remainder of this act without the sentence, clause, provision or section held invalidly enacted or applied.

(b) *This act shall be interpreted by the commissioner for the purpose of protecting the citizens of this state, against financial loss, who purchase payment instruments or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the state.*

Sec. 11. K.S.A. 9-508, 9-509, 9-510, 9-511, 9-512 and 9-513 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.