

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2874

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

HB 2874, as amended, would enact new law by creating the Kansas Money Transmitter Act and amend the banking code to provide licensure requirements for the regulation of the transmission of money. The new law would require the Bank Commissioner to issue a license only if the Commissioner is of the opinion that the person (includes businesses and other entities) will be able to and will perform its obligations to purchasers of money transmission services, 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.

The Commissioner also would have the authority, after notice and opportunity for hearing, to revoke a license, if the Commissioner finds:

- 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;
- The person no longer meets a requirement for initial granting of a license;
- The person or senior officer, director, or a stockholder who owns more than 10 percent of the business' outstanding stock has been convicted of a crime involving fraud, dishonesty or deceit;
- There has been entry of a federal or state administrative order against the person for violation of any law or regulation applicable to the conduct of the money transmission business;

*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>

- A refusal by the person to permit an investigation by the Commissioner;
- A failure to pay any fee required by this Act; or
- A failure to comply with any order of the Commissioner.

The licensee would be required, at all times, to possess permissible investments having an aggregate market value of not less than the aggregate amount of all outstanding payment instruments issued or sold by the licensee in the United States. The Commissioner would be permitted to waive the requirement if the dollar volume of the outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to KSA 9-509. Permissible investments are to be deemed, by operation of law, to be held in trust for the benefit of purchasers and holders of the licensee's outstanding payment instruments in the event of bankruptcy of the licensee, even if the investments are commingled with other assets of the licensee.

The bill also would require the information and reports obtained by the Commissioner in the course of licensing or examining a person, to be kept confidential, with exception. The Commissioner would be given 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 also would have the authority to conduct joint examinations with other regulatory agencies. The Commissioner also would be permitted to provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who are required to maintain the confidentiality of the information. Nothing in the bill, however, would prohibit the Commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on these persons.

The bill also would allow that the confidentiality of information provisions would expire on July 1, 2011, unless the Legislature acts to reauthorize the provisions. The provisions are to be reviewed by the Legislature prior to July 1, 2011.

Current law would be amended to add a number of definitions associated with money transmission. Definitions, including money transmission and payment instrument, reflect electronic means. "Person" retains its current definition, as any individual, partnership, association, joint-stock association, trust, corporation, or any other

form of business enterprise authorized to do business in this state. A "payment instrument" would include 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 definition specifically provides that the term would not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

Current money transmission law also would be amended to provide requirements for licensure of money transmitters. The bill would require an application for licensure to be submitted on forms prescribed by the Commissioner. The application is to be accompanied by an application fee that is to be established by rules and regulations adopted by the Commissioner. A new requirement for applicants would be demonstration of a net worth of \$250,000. Current law allows for \$100,000. Another new requirement for applicants would be a requirement to provide cash or securities, or post a bond in the amount of \$200,000. Current law provisions allow for \$50,000. Additionally, the Commissioner would be permitted to increase the amount of cash and securities to a \$500,000 maximum upon the basis of impaired financial condition. The licensee would be required to 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. The Commissioner also would be given the authority to conduct examinations of licensees to determine compliance with state and federal law. An amendment is made to include savings banks, another state, and the state of Kansas and its agencies to those institutions and entities currently exempted from the act.

The bill would amend the current penalty provisions of the act by removing reference to a misdemeanor and associated fine and penalty and instead provide that a person who knowingly violates any provision of the act would be guilty of a severity level 9, nonperson felony.

The bill also would include a statement of purpose of the act, which is intended to protect the citizens of Kansas 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.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of the Office of the State Bank Commissioner whose representative indicated that the bill was designed to modernize current statutes to ensure that new technological methods of money transmission are clearly covered by the licensing requirements of the law. Howrey, LLP, also provided testimony for the Non-Bank Funds Transmitters Group, in support of the bill.

The House Committee on Financial Institutions amended the bill to clarify that the penalty for violations of the provisions of the act, which under the bill would result in a severity level 9, nonperson felony, would be imposed when a person “knowingly” violates any provision of the act.

The Senate Committee on Financial Institutions amended the bill to create an Open Records expiration for confidentiality provisions and to amend the net worth requirement for money transmitters. The amendments were proposed by the Office of the State Bank Commissioner.

The fiscal note prepared by the Division of the Budget indicates that passage of the bill would not have a fiscal effect on the operating expenditures of the Office of the State Bank Commissioner, because the agency already licenses money transmitters. However, the agency currently does not perform examinations on money transmitters; if the agency decided to initiate an examination, then focus could be taken away from the agency’s normal examinations of banks and lenders. However, the examinations would not cost the agency additional money, as the bill would require the money transmitter to pay the cost associated with the examination. The agency does not anticipate it would need any new FTE positions to cover the workload associated with the bill. The Kansas Sentencing Commission indicated that since the bill would create a severity level 9, nonperson felony, the bill could increase the prison population and generate the need for additional bed space. The agency does not have sufficient data on which to base an estimate. The fiscal note also indicates, according to the Department of Corrections, that nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill does not contribute to the need for capacity expansion, additional costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Health care costs also would need to be taken into consideration. Any fiscal effect resulting from the bill is

not reflected in *The FY 2007 Governor's Budget Report*.