SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 372

As Amended by Senate Committee on Financial Institutions and Insurance

Brief*

SB 372 would amend provisions in the Kansas Money Transmitter Act to revise and update definitions for the terms “agent,” “permissible investments,” and “person”, allow the Bank Commissioner to establish an adjustable fee schedule for licensees that accounts for budgetary requirements, allow the Commissioner to regulate unlicensed activity, and update the acts subject to disciplinary action under the Act.

Definitions

Specifically, the bill would add the definition of “agent” to the Act; the term would mean “an entity or person designated by the licensee, or by an exempt entity, to engage in the business of transmitting money on behalf of the licensee, or an exempt entity, at one or more physical locations throughout the state or through the internet.” The bill also would revise the definition of “permissible investments” to delete certain investment types, revise current investment types, and insert additional investment types including:

- Deposits in a demand or interest bearing account with a domestic federally insured depository institution, including certificates of deposits;
- Debt obligations of a federally insured depository institution;

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*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

- Any investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates such securities;

- Investment grade bonds and other legally created general obligations of a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the U.S.; and

- Obligations that a state, an agency, or political subdivision of a state, the United States, or an instrumentality of the U.S. has unconditionally agreed to purchase, insure, or guarantee; and that bear a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

The bill also would update the definition of the term "person."

Fee Structure

The bill would delete a provision that allowed the license application fee to be established by agency rules and regulations. Instead, the bill would allow the Commissioner to prescribe the form and manner for submission of the application. A nonrefundable fee for each agent and location, as established by the Commissioner, would be required to be submitted with the application and would be due annually on July 1. The Commissioner would be authorized to determine the amount of the fees, in order to provide sufficient funds to meet the budget requirements associated with administering and enforcing the Act for each fiscal year. "Each agent location" would be defined by the bill to mean "each physical location within the state where money transmission is conducted, including but not limited to, branch offices, authorized vendor offices, delegate offices, kiosks and drop boxes."

A license must be renewed by filing, with the Commissioner, a complete application and nonrefundable fees at least 30 days prior to expiration of the license.

Investigatory Powers

In addition to a current authority to examine books and records of persons operating in accordance with the Act, the bill would grant the Commissioner the authority, for the purposes of investigation, examination, or other proceeding under the Act, to administer oaths, subpoena witnesses and documents, take evidence, and require the production of any document that is determined to be relevant to the inquiry.

Enforcement Authority; Violations of the Act; Unlicensed Activity

The bill also would grant the Commissioner the power to issue an order to address any violation of the Act by:

- Assessing a fine against any person who violates this act, or rules and regulations adopted thereto, in an amount not to exceed $5,000 per violation;
- Assessing the agency's operating costs and expenses for investigating and enforcing this act;
- Requiring the person to pay restitution for any loss arising from the violation or requiring the person to disgorge any profits arising from the violation;
- Barring the person from future application for licensure pursuant to the Act; and
- Requiring such affirmative action as in the judgment of the Commissioner which will carry out the purposes of this act.

The Commissioner would be permitted to enter into a consent order at any time with a person to resolve a matter arising under this act, rules and regulations adopted thereto, or an order issued pursuant to this act.

The bill also would allow the Commissioner to bring an action for injunctive relief to enjoin a violation (or a likely violation of the Act) or enforce compliance, regardless of whether or not criminal proceedings have been instituted. Any person engaging in activities that are regulated and require licensure under the Act would be considered to have consented to the jurisdiction of the courts of this state for all actions arising under the Act.

Disciplinary Action; License Revocation

The bill would expand the list of prohibited actions under the Act that could result in license revocation to include having:

- Filed a document or statement falsely representing or omitting a material fact;
- Concealed a fact or a condition exists which would clearly have justified the Commissioner's refusal to grant a license had the fact or condition been known to exist at the time the application for license was made;
- Engaged in any transaction, practice, or business conduct that is fraudulent and deceptive in connection with the business of money transmission;
- Advertised, displayed, broadcast, or televised any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for the transmission of money;

- Failed to keep and maintain sufficient records to permit an audit to satisfactorily disclose to the Commissioner the licensee's compliance with the provisions of the Act; or

- Been the subject of any disciplinary action by this or any other state or federal agency.

The list of other prohibited acts also would include instances where a final judgment has been entered against the person in a civil action and the Commissioner finds the conduct (subject of the judgment) indicates it would be contrary to the public interest to permit the person to be licensed or in instances where the person has violated any order issued by the Commissioner, any provision of this act, any rule and regulation adopted thereto, or any other state or federal law applicable to money transmission.

Examination Reports

The bill would permit the Commissioner to accept an examination report or investigation report from another state or federal licensing agency, in which the accepted report is an official report of the Commissioner. Acceptance of the report, however, would not waive any fee required by this act.

Technical Corrections; Reorganization

The bill would make several technical amendments, including the reorganization of provisions in the existing Act.

Background

The bill was introduced at the request of the Office of the State Bank Commissioner. The Deputy Bank Commissioner indicated the agency currently licenses 61 money transmitter companies who conduct business through 5,955 agents; over time, the number of money transmitter companies have increased, as well as the nature of money services business. The increase in the amount of money transferred out of the country, for example, has led to higher scrutiny for compliance with the Bank Secrecy Act and requirements from the Financial Crimes Enforcement Network (FinCEN). The representative noted the agency strives to keep up with industry changes and staff has reviewed other states' laws, including the model act by the Money Transmitters Regulatory Association, and the Uniform Money Services Act drafted by the National Conference of Commissioners on Uniform Law. Based on this review, the agency requested the amendments to the Act. Written testimony in support of the bill was submitted by the Money Services Round Table (TMRST), an organization representing large, national non-bank money transmitters. The TMRST statement indicated that, on balance, the proposed amendments to existing law provide a needed update consistent with provisions in transmitter licensing laws in other states. TMRST believes these changes, particularly those that deal with additional powers for the agency to take action against those that violate the law, are necessary to protect the public interest. There were no opponents to the bill at the time of the Senate Committee hearing.

The Senate Financial Institutions and Insurance Committee recommended an amendment to specify when, after notice and opportunity for a hearing, the Commissioner is permitted to issue an order. Similar requirements are found in existing law (the Commissioner's ability to revoke a license). A technical amendment also was made to the bill's title.

The fiscal note prepared by the Division of the Budget on the original bill states the Office of the State Bank Commissioner indicates the bill would increase revenues to the State Bank Commissioner Fee Fund by $40,670 in FY 2013. Under current law, the agency indicates it will collect approximately $64,330 in application fees from money transmitters in FY 2013 and these fees are deposited in the State Bank Commissioner Fee Fund. However, the agency indicates the costs associated with enforcing the Money Transmitter Act are estimated to be $105,000 for salaries and wages, travel costs, office space, equipment, and supplies. The bill would allow the agency to collect adequate fees to offset the costs of administering and enforcing the requirements of the Money Transmitter Act. The agency is unable to provide an estimate of the amount of additional revenue that would be generated from the new authority to issue fines; however, the amount of additional revenue is expected to be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2013 Governor's Budget Report*.