

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 139**

As Amended by Senate Committee on Financial  
Institutions and Insurance

**Brief\***

SB 139 would amend the Kansas Money Transmitter Act to allow money transmitters to submit applications for licensure and allow the Bank Commissioner (Commissioner) to request and receive licensure information and report violations of the law and other relevant information through a nationwide multi-state licensing system and registry. The bill also would revise and add definitions in the Act; clarify licensee activities, specifying when licensees are allowed to share agents; and authorize the Commissioner to adopt rules and regulations necessary to implement the Kansas Money Transmitter Act. The bill also makes technical amendments to the Act.

***Definitions***

The bill would revise current definitions in the Act, including the terms “agent,” “electronic instrument,” “money transmission,” “permissible investments,” and delete the term “stored value.” The amendment to the term “electronic instrument” replaces reference to a stored value card or device with prepaid access card or device.

The bill also would add definitions for “licensee,” “nationwide multi-state licensing system and registry,” “resident,” and “tangible net worth.” The term “nationwide multi-state licensing system and registry” would mean a licensing system developed and maintained by the

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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>

Conference of State Bank Supervisors (CSBS), or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission.

The term "tangible net worth" would mean the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill. Under the bill, the tangible net worth for applicants must be at least \$250,000, as shown by an audited financial statement and certified in the form and manner prescribed by the Commissioner. The Commissioner could accept a consolidated financial statement from an applicant's holding company.

#### ***Licensure Requirements—Money Transmission***

The bill would delete a requirement in current law requiring license fees to be due annually on July 1 and, instead, would provide licenses expire on December 31, annually. The bill would provide for the renewal and reinstatement of licenses. License and renewal applications would be required to be accompanied by nonrefundable fees established by the Commissioner for the license and each agent location.

#### ***Nationwide Multi-State Licensing System and Registry***

The bill would allow the Commissioner to use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity the Commissioner deems appropriate. The Commissioner also would be permitted to use the system and registry for:

- Requesting and distributing information regarding money transmitter licensing to and from any source;

- Establishing relationships or contracts with the system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in this licensing system and registry;
- Reporting violations of the law, as well as enforcement action and other relevant information;
- Requiring any applicant or licensee to file reports in the form prescribed by the Commissioner; and
- Requesting information from and distributing information to the U.S. Department of Justice or any governmental agency (under current law, the Commissioner is allowed to require fingerprinting to conduct a state and national criminal history record check).

The bill would require any person using the multi-state licensing system to pay all associated costs.

#### ***Contractual Relationship of the Licensee and Agent***

The bill would exempt agents of licensees subject to the Act from compliance with the licensing provisions of the Act and specify that only a licensee is authorized to designate an agent (persons acting as agents for exempt entities would not be exempt from the Act). Agents would be prohibited from appointing subagents. The bill would further specify that persons accepting a consumer's funds for transmission through an exempt entity are money transmitters and subject to the provisions of the Act. Applicants, in conjunction with filing a renewal application, would be required to provide a complete list of its proposed or existing agents to the Commissioner. Further, licensees would be required to provide any additions or deletions in the licensee's agents at the end of each calendar quarter to the Commissioner.

The bill also would require written contact between a licensee and agent to be maintained for inspection by the Commission upon request. An agent would be permitted to only conduct activities authorized by the licensee in the written agreement, unless the agent also is a licensee. The contract is required to contain certain provisions, including:

- The agent must operate in full compliance with this act and the rules and regulations adopted thereunder;
- The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee; and
- A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.

Under the bill, a licensee would be permitted to contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards.

### ***Oversight; Confidentiality and Disclosure***

The bill would provide that the Commissioner is to rely on the Deputy Commissioner of the Banking Division and the Deputy's staff to administer, interpret, and enforce the Act.

Under the bill, requirements under federal and state law regarding the confidentiality of information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law would continue to apply to any such information or material disclosed to the system. This information and material, however, may be shared with state and federal financial services' regulatory officials without the loss of confidentiality protections provided by federal and state laws. The provisions relating to

confidentiality and disclosure will expire on July 1, 2018, unless the Legislature acts to reenact such provisions (provisions are subject to review prior to the stated date).

Finally, the bill would authorize the Commissioner to adopt rules and regulations necessary to administer and implement the Kansas Money Transmitter Act.

## **Background**

The bill was introduced at the request of the Office of the State Bank Commissioner whose representative indicated the bill would allow money transmitters to submit original and renewal applications through the nationwide multi-state licensing system and registry (NMLS). The NMLS was mandated by the federal SAFE Act for the licensing of loan originators and has expanded to allow for multi-state licensing of other financial institutions, including money transmitters. It is estimated about 50 of the 65 money transmitters regulated in Kansas already are submitting applications through the NMLS as mandated by other states where these persons are licensed. Among other amendments to the Act, the OSBC representative indicated the bill addresses the growing industry of prepaid access cards by allowing companies offering prepaid access cards to share the agents of another licensee for the sole purpose of reloading funds onto their cards. Written testimony in support of the bill was submitted by The Money Services Round Table.

The Senate Committee on Financial Institutions and Insurance amendment deletes language authorizing payment of fees on July 1 (under the bill, a license would expire on December 31). The amendment was requested by the Office of the State Bank Commissioner.

The fiscal note prepared by the Division of the Budget on the original bill states the Office of the State Bank Commissioner indicates the costs associated with implementing the requirements of the bill would be negligible and could be absorbed within its existing budget.