

Financial Organizations—Kansas Money Transmitter Act and Kansas Mortgage Business Act Amendments; ITMs; and Kansas ABLE Savings Program; HB 2216

HB 2216 makes several amendments to the Kansas Money Transmitter Act (KMTA); amends the Kansas Mortgage Business Act (KMBA) to create an exclusion for certain liens in the definition of “mortgage loan”; amends a provision governing branch banking and authorized transactions by remote service units in the Kansas Banking Code to update the definition of “remote service units”; and enacts new law to establish the Kansas ABLE (Achieving a Better Life Experience) Savings Program.

KMTA—Amendments

The bill makes several amendments to the 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 (Commissioner) with authority to increase the required amount of surety on a licensee. Amendments to the KMTA are described below.

Definitions

The bill updates 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 replaces the term “outstanding payment instrument” with “outstanding payment liability,” which is defined to mean:

- With respect to a payment instrument, any payment instrument issued or sold by the licensee that 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 been paid yet 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 amends permissible investment provisions in the KMTA to make updates consistent with the new term “outstanding payment liability.”

Surety Requirements

The bill amends surety requirements for licensure applicants. The bill retains the requirement that any applicant must maintain cash or securities of at least \$200,000. The Commissioner has been 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 will 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 modifies 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 provides 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.

Exemptions from KMTA Provisions

The bill exempts certain service providers from the provisions of the KMTA. Under continuing law, banks, building and loan associations, savings and loan associations, savings banks or credit unions, the federal government and its agencies, and the State of Kansas and its agencies are exempted from the provisions. Service providers exempted by the bill are those providers that:

- By written agreement with the exempt entities specified in law (*i.e.*, banks, credit unions, governments, and government agencies), provide for receipt and delivery of funds, network access, processing, clearance, or settlement services in support of money transmission activities; and
- Allow the state or federal regulators with regulatory jurisdiction over the exempt entity to examine and inspect the applicable records, books, and transactions relating to the service provider.

The bill also deletes reference to building and loan associations in this exemption.

Additional Requirements

The bill requires 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 permits 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 authorizes 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.

KMBA—Amendments

The bill amends the KMBA to create an exclusion for certain liens in the definition of “mortgage loan.” This definition is modified by the bill to exclude “liens of contractors” (also known as contractor’s liens), as defined in Chapter 60 of the *Kansas Statutes Annotated*.

The bill also makes technical changes, including an updated reference to the federal Truth in Lending Act.

Kansas Banking Code—ITMs

The bill amends a provision governing branch banking and authorized transactions by remote service units in the Kansas Banking Code to update the definition of “remote service units” and clarify the meaning of “online” and “offline” as the terms apply to the definition. The change to the definition of “remote service units” will allow banks to operate interactive teller machines (ITMs).

Under the bill, a “remote service unit” means “an electronic information processing device, including associated equipment, structures, and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank or is activated by a person upon verifiable personal identification.” The bill further specifies that this term must include “online” computer terminals that may be equipped with a telephone or televideo device that allows contact with bank personnel and “offline” automated cash dispensing machines and automated teller machines.

Kansas ABLE Savings Program

The bill establishes the Kansas ABLE Savings Program (program), an enabling tax-deferred savings program authorized by the passage of the federal ABLE Act, for the purpose of empowering individuals with disabilities and their families to save private funds to support the individuals with disability and to provide guidelines for the maintenance of such accounts. The State Treasurer (Treasurer) will implement and administer the program. Additional program details follow.

Definitions

Several terms are defined in the bill, including “financial organization”; “conservator” and “guardian” (both as defined in KSA 59-3050 *et seq.*); and “qualified disability expenses,” referring to those disability expenses included in § 529A of the federal Internal Revenue Code of 1986, as amended. The additional terms defined include:

- “Account owner” refers to the person who enters into an ABLE savings agreement, and who also is the designated beneficiary;
- “Designated beneficiary” means a Kansas resident whose “qualified disability expenses” may be paid from the account, and who must be an eligible individual at the time the account is established;
- “Eligible individual” for an account refers to an individual entitled to benefits based on blindness or disability that occurred before such individual attained the age of 26, or an individual who filed a disability certification, to the satisfaction of the Secretary of the U.S. Treasury (Secretary), with the Secretary for such taxable year;
- “Management contract” refers to the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program; and
- “Savings agreement” is an agreement between the program manager or the Treasurer and the account owner.

Duties and Responsibilities of the Treasurer

The Treasurer will implement and administer the program. Duties include making changes to the program required for the participants to receive the federal income tax benefits or treatment under § 529A, as amended; establishing methods for disbursement of funds held in accounts and for the allocation of funds for administrative costs; promulgating rules and regulations to effectuate the provisions of the program; making an annual evaluation of the program and preparing an annual report of such evaluation to be provided to the Governor, the Senate, and the House of Representatives; and notifying the Secretary when an ABLE account is opened and submitting reports concerning the program required by the Secretary.

The Treasurer is authorized to enter into agreements with other states to either allow Kansas residents to participate in a plan operated by another state or to allow residents of other states to participate in the Kansas program.

Program Implementation

The Treasurer is authorized to implement the program through the use of financial organizations as account depositories and managers and to solicit proposals from financial organizations to act as depositories and managers. The financial organizations submitting proposals will be required to describe the investment instruments held in accounts.

The Treasurer is permitted to select more than one financial organization or investment instrument for the program. The Treasurer will be required to select the financial organization demonstrating the most advantageous combination, both to potential participants and the state, of eight factors set out in the bill.

Minimum Required Contract Terms

The Treasurer is authorized to enter into any contracts with a financial organization needed to put into effect the provisions of the program. The bill establishes the minimum required management contract terms to be performed by the financial organization. These terms will require a financial organization to take action to ensure compliance with program requirements and actions not contrary to managing the program as a qualified ABLE program under § 529A; provide adequate records, keep accounts segregated, and provide the Treasurer with the information necessary to prepare statutorily required statements; provide the Treasurer access to the books and records of the program manager to the extent needed to determine compliance with the contract, the program, and § 529A; hold accounts for the benefit for account owners; have independent audits performed at least annually and provide the audit results to the Treasurer; provide the Treasurer with copies of all regulatory filings and reports during the term of the management contract or while holding any accounts (other than confidential filings and reports that do not become part of the program) and make available to the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except those reports that may not be disclosed under law; and ensure any description of the program in any media form is consistent with the developed marketing plan.

Authorized Actions by the Treasurer

The Treasurer is authorized to do the following:

- Enter into any contracts necessary and proper for program implementation;
- Require an audit of the operations and financial position of the program depository and manager, if the Treasurer has reason to be concerned about the financial position, the record-keeping practices, or the status of accounts; and
- Terminate or not renew a management agreement and, upon termination or non-renewal, take custody of accounts and seek prompt transfer of the accounts to another selected program manager or depository and into investment instruments as similar as possible to the original instruments.

The bill allows the Treasurer, the Department for Children and Families, the Department of Health and Environment, and the Department for Aging and Disability Services to exchange data regarding eligible individuals to carry out the purpose of this act.

ABLE Account Requirements

An ABLE account could be opened by a designated beneficiary, or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract, and each beneficiary is allowed to have only one account. A non-refundable application fee could be established by the Treasurer. The account application will be in the form prescribed by the Treasurer and contain the required information specified in the bill.

Contribution Conditions

After an ABLE savings account is opened, any person will be allowed to make contributions, subject to § 529A limitations or rules and regulations promulgated by the Secretary pursuant to this act. Only cash contributions will be permitted.

The Treasurer or program manager is required to reject or promptly withdraw contributions in excess of the established limits, or the total contributions if:

- The value of the account is equal to or greater than the account maximum established by the Treasurer (equal to the account maximum for post-secondary education savings accounts established pursuant to KSA 75-640 *et seq.*, and amendments thereto); or
- The designated beneficiary is not an eligible individual in the current calendar year.

Account Owner Options

The bill allows the account owner to change the designated beneficiary of an account to a member of the family of the prior designated beneficiary, according to procedures established by the Treasurer, and to transfer all or a portion of an account to another ABLE savings account for a designated beneficiary who is a member of the family as defined by § 529A. An account owner will not be allowed to use an interest in an account as a security for a loan, and any such pledge would have no force and effect.

Reporting Requirements

Any distribution from an account to any individual or for the benefit of any individual during a calendar year would have to be reported to the federal Internal Revenue Service, each account owner, and the designated beneficiary or the distributee as required by state or federal law.

The bill requires an account owner to be provided at least 4 statements each year within 30 days after the end of the 3-month period to which a statement relates. The information that will need to be included in the statements is outlined in the bill. Statements and information relating to these accounts will have to be prepared and filed as required by this act and any other state or federal law.

Separate accounting for each designated beneficiary will be required, and an annual fee could be imposed on the account owner for maintenance of an account.

Treatment of Account Funds

Moneys in an ABLE account will be exempt from attachment, execution, or garnishment and could be claimed by the Kansas Medicaid plan only after the death of the designated beneficiary subject to limitations imposed by the Secretary.

Obligations Not Created

The Act will not obligate the Treasurer, the State, or any agency or instrumentality of the State to guarantee the return of principal, the rate of interest or other return on any account, or the payment of interest or other return on any account for the benefit of an account owner or designated beneficiary. The Treasurer is authorized to promulgate rules and regulations to clarify that documents used in connection with opening an account clearly indicate the account is not insured by the State and the principal deposited and the investment return are not guaranteed by the State.

Kansas ABLE Savings Program Trust and Savings Expense Funds Established

The bill establishes the Kansas ABLE Savings Program Trust Fund in the State Treasury. If the Treasurer decides to accept deposits from contributors, instead of having the deposits sent directly to the program manager, the funds will be deposited in the trust fund. All interest derived from the deposit and investment of moneys in the savings trust fund will be credited to the fund. All unexpended and unencumbered moneys in the trust fund at the end of any fiscal year will remain in the trust fund and not be credited or transferred to the State General Fund (SGF), or to any other fund.

Additionally, the Kansas ABLE Savings Expense Fund is established in the State Treasury, consisting of moneys received from the ABLE savings program manager, or any governmental or private grants, and any SGF appropriations for the program. All expenses incurred by the Treasurer in developing and administering the program will be payable from this expense fund.