SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2216

As Amended by Senate Committee on Financial Institutions and Insurance

Brief*

HB 2216, as amended, would make several amendments to the Kansas Money Transmitter Act (KMTA), would amend the Kansas Mortgage Business Act (KMBA) to create an exclusion for certain liens in the definition of "mortgage loan," and would amend 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."

KMTA—Amendments (Sections 1-6)

The bill would make 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 with authority to increase the required amount of surety on a licensee. Amendments to the KMTA are described below.

Definitions

The bill would update 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

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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 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 would replace 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 would amend permissible investment provisions in the KMTA to make updates consistent with the new term "outstanding payment liability."

Surety Requirements

The bill would amend surety requirements for licensure applicants. The bill would retain the requirement that any applicant must maintain cash or securities of at least $200,000. Under current law, the Commissioner is 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 would 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 would modify 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 would provide 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 would exempt certain service providers from the provisions of the KMTA. Under current 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 would be those providers that:

- By written agreement with the exempt entities specified in current law (*i.e.,* banks, credit unions, governments and 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 would delete reference to building and loan associations in this exemption.

Additional Requirements

The bill would require 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 would permit 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 would authorize 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 (Section 7)

The bill would amend the KMBA to create an exclusion for certain liens in the definition of "mortgage loan." This definition would be 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 would make technical changes, including an updated reference to the federal Truth in Lending Act.

Kansas Banking Code—ITMs (Section 8)

The bill would amend 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" would allow banks to operate interactive teller machines (ITMs).

Under the bill, a "remote service unit" would mean "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 would further specify 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.

The bill also would make technical changes.

Background

HB 2216 was introduced in the House Committee on Financial Institutions by Representative Kelly at the request of the Office of the State Bank Commissioner (OSBC).

In the House Committee on Financial Institutions, the Staff Attorney for the OSBC cited rapid changes of technology and the increasing amount of money transmission being conducted electronically and through the internet as reasons for regular updates to the KMTA. The bill would clarify the licensee-agent relationship, the conferee noted, as some newer internet companies have been exploiting the ability to appoint another entity to act on behalf of the licensee (in the more traditional relationship, a company might appoint a convenience store to act as an agent on its behalf) in order to run a separate money transmitter business and avoid licensure themselves. The inclusion of a definition for "outstanding payment liabilities" would ensure that online and other licensed entities transmitting money electronically accurately report their outstanding payments. There was no other testimony presented at the House Committee hearing.

The House Committee amendment modified a provision in the bill relating to designation of agents not physically located in the state to specify the required prior approval by the Commissioner would apply to agents conducting money transmission business through the internet.

In the Senate Committee on Financial Institutions and Insurance, a representative of the OSBC appeared in support of the bill. Additionally, a representative for Fiserv Solutions, Inc. provided neutral testimony. The representative requested consideration of an amendment that would provide clarification of legislative intent as to whether a service provider should come under the KMTA.

The Senate Committee amendment exempted certain service providers from the provisions of the KMTA. The amendment was suggested by the parties to the bill. Additionally, the Senate Committee amendment inserted provisions relating to the KMBA (HB 2258, as recommended by House Committee) and inclusion of ITMS in the Banking Code definition of "remote service unit" (HB 2352, as recommended by House Committee).

According to the fiscal note prepared by the Division of the Budget on HB 2216, as introduced, the OSBC indicates the costs associated with implementing the requirements of the bill would be negligible and could be absorbed within its existing budget. Fiscal information for the provisions added by the Senate Committee amendments are detailed below.

HB 2258

HB 2258 was introduced in the House Committee on Financial Institutions by Representative Campbell on behalf of the OSBC.

In the House Committee on Financial Institutions, the Deputy Commissioner for Consumer and Mortgage Lending, OSBC, testified the bill would exempt contractors, such as companies selling siding, roofing, or water softening systems, from mortgage company and loan originator licensing requirements. Companies that place contractor's liens currently are regulated under the Uniform Consumer Credit Code and required to file a notification with the OSBC. The goal, the conferee stated, would be to prevent a company that may place a contractor's lien on a property, but does not otherwise engage in mortgage activity, from duplicative and unintended licensing requirements. There was no other testimony presented at the House Committee hearing.

In the Senate Committee on Financial Institutions and Insurance, the Deputy Commissioner for Consumer and Mortgage Lending, OSBC, testified in support of the bill. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates HB 2258 would have no fiscal effect. The agency indicates the bill has the potential to avoid duplicative regulation for companies that do not offer mortgage loans.

HB 2352

HB 2352 was introduced in the House Committee on Financial Institutions by Representative Billinger at the request of the Kansas Bankers Association (KBA). At the hearing in the House Committee on Financial Institutions, the KBA representative indicated the bill would modernize the Banking Code by recognizing ITMs in today's financial marketplace. The Office of the Comptroller of the Currency, which serves as the regulator for federal chartered banks, already recognizes this technology and federally-chartered banks are utilizing ITMs. The bill would allow state-chartered banks the option to utilize these machines. There was no other testimony presented.

In the Senate Committee on Financial Institutions and Insurance, a representative of the KBA testified in support of the bill. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the OSBC indicates HB 2352 would require it to incorporate the changes to the Banking Code into its examination schedule of state-chartered banks. However, OSBC estimates the additional costs to incorporate these changes would have a negligible fiscal effect on its operations. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.