

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 87

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 87 would enact and amend law relating to the Kansas Credit Services Organization (CSO) Act (Act). Descriptions of specific bill provisions follow.

Definitions

The bill would add and amend definitions to be used in the Act. The bill would amend the definition of “Commissioner” to specify the Commissioner is the State Bank Commissioner or designee. The designee would be the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner (OSBC). Additionally, the bill would update the definitions for “debt management service” and “trust account,” and delete the definitions for “related interest” and “registrant.”

The bill would establish definitions for the following terms:

- “Licensee” – a person who is licensed by the Commissioner as a CSO. [The bill would replace all references of registrant in the Act with licensee, in addition to replacing “registration” with “licensing,” “license,” or “licensure,” and “registered” with “licensed” to reflect this definition change.];

*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>

- “Nationwide Mortgage Licensing System and Registry” [also known as NMLSR] – a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other financial service providers.

Licensee Requirements

Application for Licensing Fee

The bill would remove the \$100 nonrefundable application fee for licensing CSOs and would authorize the Commissioner to set the licensing fee through the adoption of rules and regulations.

License Expiration

The bill would specify a CSO license issued under the Act would expire on April 30 of each year.

Surety Bond Requirements

The bill would amend the requirements for a licensee to file a surety bond with the Commissioner. The bill would expand the requirement that a surety bond may not be terminated without 30 days prior written notice to the Commissioner by specifying such termination would not affect the surety’s liability for violations of the Act occurring prior to the effective date of cancellation. Additionally, principal and surety would be required to be and remain liable for a period of two years from the date of any action or inaction of the principal giving rise to a claim under the surety bond.

Duties of the Licensee Relating to Debt Management Services

The bill would amend provisions relating to the duties of a licensee relating to debt management services. The bill would amend the Act to state no person required to be licensed by the Act shall engage in debt management services, unless the person has met all criteria. The bill would amend the criteria by requiring a licensee to include all outstanding debt obligations, as listed on the consumer's credit report, as well as any debt obligations identified by the consumer, for the purpose of the initial budget plan. The bill would update reference to the plan between the consumer and licensee to refer to a debt management services agreement. Additionally, the bill would update the requirements for the written debt management services agreement to include the full legal name and doing business as "dba" name of the licensee.

The bill would require the name and license number of the licensee on record with the Commissioner on all solicitations and published advertisements concerning a CSO directed at Kansas residents, including those solicitations and published advertisements on the internet or by other electronic means. Each licensee would be required to maintain a record of all solicitations or advertisements for 36 months. The bill would specify "advertising" does not include business cards or promotional items. Solicitations and advertisements would be prohibited from containing false, misleading, or deceptive information. Further, the bill would prohibit a licensee conducting CSO business in Kansas from using any name other than the name stated on the license.

Prohibited Acts

The bill would update the prohibition on using false or misleading representation in the offer or sale of services of a debt management services agreement or CSO business by removing a specific reference to erasing bad credit. The bill

would also prohibit a licensee giving a reward, bonus, premium, commission, or any other consideration for the referral of a consumer to the licensee's CSO business and charge the consumer for the amount.

Disbursement of Certain Funds

The bill would increase the amount of time the CSO would have to disburse consumer funds to the consumer's creditors from 10 to 20 calendar days, or the latest date before the consumer would incur any fee, charge, or penalty due to delay in payment.

Reporting Requirements

Reports to the Consumer

The bill would amend the requirements for licensee reports provided to a consumer. The bill would specify the report provided to the consumer must contain information about the total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer, and the amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

Annual Report to the Commissioner

The bill would amend the annual reporting requirement by changing the date, from March 1 to April 1, for the annual report filed with the Commissioner each year relating to CSO business conducted by the licensee during the preceding calendar year.

The bill would also specify information contained in the annual report would be confidential and may only be published in composite form. The confidentiality provision would sunset on July 1, 2022.

Reporting Requirement Based on Certain Events

The bill would add two events which would require a licensee to file a written report with the Commissioner within 15 days after the event occurred. These two events would be a change in the licensee's name or legal entity status, and the addition or loss of any owner, officer, partner, or director.

Fees Charged to the Consumer

The bill would amend and enact new law relating to fees charged by CSOs to consumers. The bill would increase the fee, from not exceeding \$50 to not exceeding \$75, that the licensee could charge a consumer for a one-time consultation. The bill would also increase the total maintenance fee a licensee may charge a consumer from \$20 to \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the licensee and the consumer, whichever is less.

The bill would replace a specific fee to be charged to a consumer with language stating the licensee may charge the consumer with a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, and other counseling services authorized by the Commissioner.

Additionally, the bill would permit the CSO to charge a consumer up to \$30 one time for each insufficient payment, and up to \$5 to process a payment by the consumer to the CSO through electronic means, if authorized by the consumer. The bill would specify no charge would be assessed when the consumer has agreed to make all scheduled payments by electronic means.

The CSO would be allowed to waive any fees if the CSO determines the consumer is unable to pay the fees.

Powers, Duties, and Action of the Commissioner

The bill would amend and enact new language relating to the Commissioner's powers and duties under the Act.

Investigation and Examination; Costs; Confidentiality

The bill would remove language relating to the specific reasons for when the Commissioner is permitted to investigate and examine the CSO's operations, books, and records.

The bill would also update language relating to the costs the Commissioner may charge to an applicant or licensee. The Commissioner would be permitted to charge reasonable costs of investigation, examination, and administration of the Act to the applicant or licensee, in an amount the Commissioner would be permitted to determine is sufficient to meet the budget requirements of the Commissioner for each fiscal year.

The bill would require the examination reports and correspondence regarding the reports made by the Commissioner or the Commissioner's designees to be confidential. The confidential materials subsection would sunset on July 1, 2022.

NMLSR

The bill would authorize the Commissioner to utilize the NMLSR as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any government agency, in order to reduce the points of contact the Federal Bureau of Investigation has with individual states.

The Commissioner would be permitted to use the NMLSR as a channeling agent for requesting and distributing

information regarding CSO licensing to and from any source directed by the Commissioner.

Additionally, the Commissioner would be authorized to establish relationships or contacts with the NMLSR or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, or other persons under the Act, and to take other actions as may be reasonably necessary to participate in the NMLSR.

Informal Agreements

The Commissioner would be authorized to enter into a plan of action, known as an informal agreement, with any person to address violations of the Act. An informal agreement would not be subject to provisions of the Kansas Administrative Procedure Act (KAPA) or the Kansas Judicial Review Act and would not be considered an order or other agency action. The informal agreement would be confidential and privileged; not subject to the Open Records Act, subpoena, and discovery; and not admissible in evidence in any private civil action. This subsection would sunset on July 1, 2022.

KAPA

The Commissioner would be authorized to issue, amend, and revoke written administrative guidance documents in accordance with the applicable provisions of the KAPA.

Commissioner Action Following Notice

If the Commissioner determines, after notice and opportunity for a hearing pursuant to the KAPA, a person has engaged in, is engaging, or about to engage in an act in violation of the Act, rule and regulation, or order, the Commissioner may require, by order, the following new penalties:

- If such violation is committed against elder or disabled persons as defined in KSA 2016 Supp. 50-676 (persons who are 60 years of age or older; persons who have physical or mental impairment, or both, which substantially limits one or more of such person's major life activities), the Commissioner may impose an additional penalty, not to exceed \$10,000 for each violation, in addition to any civil penalty provided by law; or
- Issue an order 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. The order may include the assessment of interest, not to exceed 8 percent per annum from the date of the violation.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the OSBC. In the Senate Committee hearing, representatives of Consumer Credit Counseling Service, Inc., Housing and Credit Counseling, Inc., and the OSBC testified in favor of the bill. The proponents generally stated the bill would provide modernization of the Act, and these changes would help CSOs provide additional services, strengthen safeguards for consumers, and update the regulatory process. The OSBC representative noted the definitions of "related interest" and "registrant" should be deleted from the bill.

No neutral or opponent testimony was provided.

The Senate Committee amended the bill to delete the definitions of "related interest" and "registrant" from the Act.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, OSBC indicates enactment of the bill would have no fiscal effect on OSBC operations.