

**SENATE BILL No. 21**

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning financial institutions; relating to the Kansas money  
2 transmitter act; amending K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a  
3 and repealing the existing sections.  
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 9-508 is hereby amended to read as  
7 follows: 9-508. As used in this act:

8 (a) "Agent" means a person designated by a licensee to receive funds  
9 from a Kansas resident in order to forward such funds to the licensee to  
10 effectuate money transmission at one or more physical locations  
11 throughout the state or through the internet, regardless of whether such  
12 person would be exempt from the act by conducting money transmission  
13 on such person's own behalf;

14 (b) "commissioner" means the state bank commissioner;

15 (c) "control" means the power directly or indirectly to direct  
16 management or policies of a person engaged in money transmission or to  
17 vote 25% or more of any class of voting shares of a person engaged in  
18 money transmission;

19 (d) "electronic instrument" means a card or other tangible object for  
20 the transmission or payment of money, including a prepaid access card or  
21 device which contains a microprocessor chip, magnetic stripe or other  
22 means for the storage of information, that is prefunded and for which the  
23 value is decremented upon each use, but does not include a card or other  
24 tangible object that is redeemable by the issuer in goods or services;

25 (e) "licensee" means a person licensed under this act;

26 (f) "nationwide multi-state licensing system and registry" means a  
27 licensing system developed and maintained by the conference of state  
28 bank supervisors, or its successors and assigns, for the licensing and  
29 reporting of those persons engaging in the money transmission;

30 (g) "monetary value" means a medium of exchange, whether or not  
31 redeemable in money;

32 (h) "money transmission" means to engage in the business of the sale  
33 or issuance of payment instruments or of receiving money or monetary  
34 value for transmission to a location within or outside the United States by  
35 wire, facsimile, electronic means or any other means, except that money  
36 transmission does not include currency exchange where no transmission of

1 money occurs;

2 (i) "outstanding payment liability" means:

3 (1) With respect to a payment instrument, any payment instrument  
4 issued or sold by the licensee which has been sold in the United States  
5 directly by the licensee, or any payment instrument that has been sold by  
6 an agent of the licensee in the United States, which has been reported to  
7 the licensee as having been sold and which has not yet been paid by or for  
8 the licensee; *or*

9 (2) with respect to the transmission of money or monetary value, any  
10 money or monetary value the licensee or an agent of the licensee has  
11 received from a customer in the United States for transmission which has  
12 not yet been delivered to the recipient or otherwise paid by the licensee;

13 (j) "payment instrument" means any electronic or written check,  
14 draft, money order, travelers check or other electronic or written  
15 instrument or order for the transmission or payment of money, sold or  
16 issued to one or more persons, whether or not such instrument is  
17 negotiable. The term "payment instrument" does not include any credit  
18 card voucher, any letter of credit or any instrument which is redeemable by  
19 the issuer in goods or services;

20 (k) "permissible investments" means:

21 (1) Cash;

22 (2) deposits in a demand or interest bearing account with a domestic  
23 federally insured depository institution, including certificates of deposit;

24 (3) debt obligations of a domestic federally insured depository  
25 institution;

26 (4) any investment bearing a rating of one of the three highest grades  
27 as defined by a nationally recognized organization that rates such  
28 securities;

29 (5) investment grade bonds and other legally created general  
30 obligations of a state, an agency or political subdivision of a state, the  
31 United States or an instrumentality of the United States;

32 (6) obligations that a state, an agency or political subdivision of a  
33 state, the United States or an instrumentality of the United States has  
34 unconditionally agreed to purchase, insure or guarantee and that bear a  
35 rating of one of the three highest grades as defined by a nationally  
36 recognized organization that rates securities;

37 (7) shares in a money market mutual fund, interest-bearing bills or  
38 notes or bonds, debentures or stock traded on any national securities  
39 exchange or on a national over-the-counter market, or mutual funds  
40 primarily composed of such securities or a fund composed of one or more  
41 permissible investments as set forth herein;

42 (8) receivables that are payable to a licensee, in the ordinary course of  
43 business, pursuant to contracts which are not past due and which do not

1 exceed in the aggregate 40% of the total required permissible investments  
2 pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past  
3 due if not remitted to the licensee within 10 business days; or

4 (9) any other investment or security device approved by the  
5 commissioner;

6 (l) "person" means any individual, partnership, association, joint-  
7 stock association, trust, corporation or any other form of business  
8 enterprise;

9 (m) "resident" means any natural person or business entity located in  
10 this state; ~~and~~

11 (n) *"service provider" means any person that provides ~~equipment or~~  
12 ~~software that is used and solely controlled~~ services as described in K.S.A.  
13 **9-511(a)(2)(A), and amendments thereto, that are used by an exempt**  
14 **entity or its agent to ~~engage in~~ provide money transmission services to the**  
15 **exempt entity's ~~own money transmission services~~ customers. A service**  
16 **provider does not contract with the customers of an exempt entity on its**  
17 **own or on behalf of an exempt entity or the exempt entity's agent; and***

18 ~~(n)~~ (o) "tangible net worth" means the physical worth of a licensee,  
19 calculated by taking a licensee's assets and subtracting its liabilities and its  
20 intangible assets, such as copyrights, patents, intellectual property and  
21 goodwill.

22 Sec. 2. K.S.A. 2016 Supp. 9-509 is hereby amended to read as  
23 follows: 9-509. (a) No person shall engage in the business of selling,  
24 issuing or delivering its payment instrument, check, draft, money order,  
25 personal money order, bill of exchange, evidence of indebtedness or other  
26 instrument for the transmission or payment of money or otherwise engage  
27 in the business of money transmission with a resident of this state, or,  
28 except as provided in K.S.A. 9-510, and amendments thereto, act as agent  
29 for another in the transmission of money as a service or for a fee or other  
30 consideration, unless such person files ~~an~~ a complete application and  
31 obtains a license from the commissioner.

32 (b) Each license shall expire December 31 of each year. A license  
33 shall be renewed by filing with the commissioner a complete application  
34 and nonrefundable application fee at least 30 days prior to expiration of  
35 the license. *Renewal applications received between December 1 and*  
36 *December 31 of each year and incomplete renewal applications as of*  
37 *December 1 of each year shall be assessed a late fee. Expired licenses*  
38 *may be reinstated through ~~February 28~~ the last day of February of each*  
39 *year by filing a reinstatement application and paying the appropriate*  
40 *application and late fees.*

41 (c) It shall be unlawful for a person, acting directly or indirectly or  
42 through concert with one or more persons, to acquire control of any person  
43 engaged in money transmission through purchase, assignment, pledge or

1 other disposition of voting shares of such money transmitter, except with  
2 the prior approval of the commissioner. Request for approval of the  
3 proposed acquisition shall be made by filing ~~an~~ *a complete* application  
4 with the commissioner at least 60 days prior to the acquisition.

5 (d) All applications shall be submitted in the form and manner  
6 prescribed by the commissioner. Additionally, the following shall apply to  
7 all applications:

8 (1) The commissioner may use a nationwide multi-state licensing  
9 system and registry for processing applications, renewals, amendments,  
10 surrenders, and any other activity the commissioner deems appropriate.  
11 The commissioner may also use a nationwide multi-state licensing system  
12 and registry for requesting and distributing any information regarding  
13 money transmitter licensing to and from any source so directed by the  
14 commissioner. The commissioner may establish relationships or contracts  
15 with the nationwide multi-state licensing system and registry or other  
16 entities to collect and maintain records and process transaction fees or  
17 other fees related to applicants, licensees, as may be reasonably necessary  
18 to participate in the nationwide multi-state licensing system and registry.  
19 The commissioner may report violations of the law, as well as enforcement  
20 actions and other relevant information to the nationwide multi-state  
21 licensing system and registry. The commissioner may require any  
22 applicant or licensee to file reports with the nationwide multi-state  
23 licensing system and registry in the form prescribed by the commissioner.

24 (2) An application shall be accompanied by nonrefundable fees  
25 established by the commissioner for the license ~~and each agent location~~.  
26 The commissioner shall determine the amount of such fees to provide  
27 sufficient funds to meet the budget requirements of administering and  
28 enforcing the act for each fiscal year. ~~For the purposes of this subsection,~~  
29 ~~"each agent location" means each physical location within the state where~~  
30 ~~money transmission is conducted, including, but not limited to, branch~~  
31 ~~offices, authorized vendor offices, delegate offices, kiosks and drop boxes.~~  
32 Any person using the multi-state licensing system shall pay all associated  
33 costs.

34 (3) (A) The commissioner may require fingerprinting of any  
35 individual, officer, director, partner, member, shareholder or any other  
36 person related to the application deemed necessary by the commissioner. If  
37 the applicant is a publicly traded corporation or a subsidiary of a publicly  
38 traded corporation, no fingerprint check shall be required. Fingerprints  
39 may be submitted to the Kansas bureau of investigation and the federal  
40 bureau of investigation for a state and national criminal history record  
41 check. The fingerprints shall be used to identify the person and to  
42 determine whether the person has a record of arrests and convictions in  
43 this state or other jurisdiction.

1 (B) The commissioner may use information obtained from  
2 fingerprinting and the criminal history for purposes of verifying the  
3 identification of the person and in the official determination of the  
4 qualifications and fitness of the person, or in the case of an applicant  
5 company, the persons associated with the company.

6 (C) For purposes of this section and in order to reduce the points of  
7 contact which the federal bureau of investigation may have with the  
8 individual states, the commissioner may use a nationwide multi-state  
9 licensing system and registry for requesting information from and  
10 distributing information to the department of justice or any governmental  
11 agency.

12 (D) Whenever the commissioner requires fingerprinting, any  
13 associated costs shall be paid by the applicant or the parties to the  
14 application.

15 (4) Each application shall include audited financial statements for  
16 each of the two fiscal years immediately preceding the date of the  
17 application and an interim financial statement, as of a date not more than  
18 90 days prior to the date of the filing of an application. The audited and  
19 interim financial statements shall be prepared in accordance with United  
20 States generally accepted accounting principles or in any other form or  
21 manner approved by the commissioner. Any person not in business two  
22 years prior to the filing of the application shall submit a statement in the  
23 form and manner prescribed by the commissioner sufficient to demonstrate  
24 compliance with subsection (e).

25 (e) In addition, each person submitting an application shall meet the  
26 following requirements:

27 (1) The tangible net worth of such person shall be at all times not less  
28 than \$250,000, as shown by an audited financial statement and certified to  
29 by an owner, a partner or officer of the corporation or other entity filed in  
30 the form and manner prescribed by the commissioner. A consolidated  
31 financial statement from an applicant's holding company may be accepted  
32 by the commissioner. The commissioner may require any person to file a  
33 statement at any other time upon request;

34 (2) such person shall deposit and at all times keep on deposit with a  
35 bank in this state approved by the commissioner, cash or securities  
36 satisfactory to the commissioner in an amount not less than \$200,000. The  
37 commissioner may increase the amount of cash or securities required up to  
38 a maximum of \$1,000,000 upon the basis of:

39 (A) The volume of money transmission business transacted in this  
40 state by such person; or

41 (B) the impaired financial condition of a licensee, as evidenced by a  
42 reduction in net worth or financial losses;

43 (3) in lieu of the deposit of cash or securities required by this

1 subsection, such person may give a surety bond in an amount equal to that  
2 required for the deposit of cash or securities, in a form satisfactory to the  
3 commissioner and issued by a company authorized to do business in this  
4 state, which bond shall be payable to the office of the state bank  
5 commissioner and be filed with the commissioner; and

6 (4) such person shall submit a list to the commissioner of the names  
7 and addresses of other persons who are authorized to act as agents for  
8 transactions with Kansas residents.

9 *(f) The commissioner has the discretion to determine the*  
10 *completeness of any application submitted pursuant to this act. In making*  
11 *the determination, the commissioner shall take into consideration*  
12 *compliance with all requirements set out in this section and any other facts*  
13 *and circumstances that the commissioner deems appropriate.*

14 *(1) If the applicant fails to complete the application for a new license*  
15 *or for a change of control of a license within 60 days after the*  
16 *commissioner provides written notice of the incomplete application, the*  
17 *application will be considered abandoned and the application fee will not*  
18 *be refunded. An applicant whose application is abandoned under this*  
19 *section may reapply to obtain a license.*

20 *(2) If the applicant fails to file a complete renewal application on or*  
21 *before December 31 of the year, the license will be deemed to expire on*  
22 *December 31 of the year.*

23 ~~(f)~~ (g) The deposit of cash, securities or surety bond required by this  
24 section shall be subject to:

25 (1) Payment to the commissioner for the protection and benefit of  
26 purchasers of money transmission services, purchasers or holders of  
27 payment instruments furnished by such person, and those for whom such  
28 person has agreed to act as agent in transmission of monetary value and to  
29 secure the faithful performance of the obligations of such person in respect  
30 to the receipt, handling, transmission and payment of monetary value; and

31 (2) payment to the commissioner for satisfaction of any expenses,  
32 fines, fees or refunds due pursuant to this act, levied by the commissioner  
33 or that become lawfully due pursuant to a final judgment or order.

34 ~~(g)~~ (h) The aggregate liability of the surety for all breaches of the  
35 conditions of the bond, in no event, shall exceed the amount of such bond.  
36 The surety on the bond shall have the right to cancel such bond upon  
37 giving 30 days' notice to the commissioner and thereafter shall be relieved  
38 of liability for any breach of condition occurring after the effective date of  
39 the cancellation. The commissioner or any aggrieved party may enforce  
40 claims against such deposit of cash or securities or surety bond. So long as  
41 the depositing person is not in violation of this act, such person shall be  
42 permitted to receive all interest and dividends on the deposit and shall  
43 have the right to substitute other securities satisfactory to the

1 commissioner. If the deposit is made with a bank, any custodial fees shall  
2 be paid by such person.

3 ~~(h)~~ (i) (1) The commissioner shall have the authority to examine the  
4 books and records of any person operating in accordance with the  
5 provisions of this act, at such person's expense, to verify compliance with  
6 state and federal law.

7 (2) The commissioner may require any person operating in  
8 accordance with the provisions of this act to maintain such documents and  
9 records as necessary to verify compliance with this act, or any other  
10 applicable state or federal law or regulation.

11 (3) For purposes of investigation, examination or other proceeding  
12 under this act, the commissioner may administer or cause to be  
13 administered oaths, subpoena witnesses and documents, compel the  
14 attendance of witnesses, take evidence and require the production of any  
15 document that the commissioner determines to be relevant to the inquiry.

16 ~~(h)~~ (j) Except as authorized with regard to the appointment of agents,  
17 a licensee is prohibited from transferring, assigning, allowing another  
18 person to use the licensee's license, or aiding any person who does not  
19 hold a valid license under this act in engaging in the business of money  
20 transmission.

21 Sec. 3. K.S.A. 2016 Supp. 9-513a is hereby amended to read as  
22 follows: 9-513a. The commissioner, after notice and an opportunity for a  
23 hearing, may deny, suspend, revoke or refuse to renew *or approve* a  
24 license issued pursuant to this act, or issue a cease and desist order if the  
25 commissioner finds any of the following are applicable to any person who  
26 is required to be licensed under this act or such person's agent:

27 (a) The financial responsibility, character, reputation, experience and  
28 general fitness of the person, such person's senior officers, directors and  
29 principal stockholders are such to warrant the belief that the business may  
30 not be operated efficiently, fairly and in the public interest;

31 (b) the person may be financially unable to perform such person's  
32 obligations or that the person has willfully failed without reasonable cause  
33 to pay or provide for payment of any of such person's obligations related to  
34 the person's money transmission business;

35 (c) the person no longer meets a requirement for initial granting of a  
36 license;

37 (d) the person has filed with the commissioner any document or  
38 statement falsely representing or omitting a material fact;

39 (e) the person concealed a fact or a condition exists which would  
40 clearly have justified the commissioner's refusal to grant a license had the  
41 fact or condition been known to exist at the time the application for the  
42 license was made;

43 (f) the person or a senior officer, director or a stockholder who owns

1 more than 10% of the money transmission business' outstanding stock has  
2 been convicted of a crime involving fraud, dishonesty or deceit;

3 (g) there has been entry of a federal or state administrative order  
4 against the person for violation of any rule and regulation applicable to the  
5 conduct of the person's money transmission business;

6 (h) the person refused to provide information requested by the  
7 commissioner or refused to permit an examination or investigation by the  
8 commissioner;

9 (i) a failure to pay to the commissioner any fee required by this act;

10 (j) the person has engaged in any transaction, practice or business  
11 conduct that is fraudulent or deceptive in connection with the business of  
12 money transmission;

13 (k) the person advertises, displays, distributes, broadcasts or televises  
14 any false, misleading or deceptive statement or representation with regard  
15 to rates, terms or conditions for the transmission of money;

16 (l) the person fails to keep and maintain sufficient records to permit  
17 an audit to satisfactorily disclose to the commissioner the licensee's  
18 compliance with the provisions of the act;

19 (m) the person has been the subject of any disciplinary action by this  
20 or any other state or federal agency;

21 (n) a final judgment has been entered against the person in a civil  
22 action and the commissioner finds the conduct on which the judgment is  
23 based indicates that it would be contrary to the public interest to permit  
24 such person to be licensed;

25 (o) the person has violated any order issued by the commissioner, any  
26 provision of this act, any rule and regulation adopted thereto, or any other  
27 state or federal law applicable to money transmission; or

28 (p) the person has refused or otherwise failed to provide, after a  
29 reasonable time as determined by the commissioner, any information  
30 necessary to approve or renew an application or license issued pursuant to  
31 this act.

32 Sec. 4. K.S.A. 2016 Supp. 9-508, 9-509 and 9-513a are hereby  
33 repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the statute book.