

HOUSE BILL No. 2216

AN ACT concerning financial organizations; relating to the Kansas money transmitter act, the Kansas mortgage business act, remote service units; enacting the Kansas ABLE savings program; amending K.S.A. 2014 Supp. 9-508, 9-509, 9-510, 9-511, 9-513a, 9-513b, 9-1111 and 9-2201 and repealing the existing sections.

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

Section 1. K.S.A. 2014 Supp. 9-508 is hereby amended to read as follows: 9-508. As used in this act:

(a) “Agent” means ~~either a person receiving designated by a licensee to receive funds from a Kansas resident and forwarding in order to forward such funds to a the licensee to effectuate money transmission or a person designated to otherwise engage in the business of money transmission on behalf of the licensee~~ 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;

(b) “commissioner” means the state bank commissioner;

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

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

(e) “licensee” means a person licensed under this act;

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

(g) “monetary value” means a medium of exchange, whether or not redeemable in money;

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

(i) ~~“outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any money order or instrument issued by the licensee which 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 yet been paid by or for the licensee~~ “outstanding payment liability” means:

(1) *With respect to a payment instrument, any payment instrument issued or sold by the licensee which 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 yet been paid by or for the licensee;*

(2) *with respect to the transmission of money or monetary value, any money or monetary value the licensee or an 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;*

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

(k) “permissible investments” means:

(1) Cash;

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

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

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

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

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

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

(8) receivables that are payable to a licensee, in the ordinary course of business, pursuant to contracts which are not past due and which do not exceed in the aggregate 40% of the total required permissible investments pursuant to K.S.A. 9-513b, and amendments thereto. A receivable is past due if not remitted to the licensee within 10 business days; or

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

(l) “person” means any individual, partnership, association, joint-stock association, trust, corporation or any other form of business enterprise;

(m) “resident” means any natural person or business entity located in this state; and

(n) “tangible net worth” means 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.

Sec. 2. K.S.A. 2014 Supp. 9-509 is hereby amended to read as follows: 9-509. (a) No person shall engage in the business of selling, issuing or delivering its payment instrument, check, draft, money order, personal money order, bill of exchange, evidence of indebtedness or other instrument for the transmission or payment of money or otherwise engage in the business of money transmission with a resident of this state, or, except as provided in K.S.A. 9-510, and amendments thereto, act as agent for another in the transmission of money as a service or for a fee or other consideration, unless such person files an application and obtains a license from the commissioner.

(b) Each license shall expire December 31 of each year. A license shall be renewed by filing with the commissioner a complete application and nonrefundable application fee at least 30 days prior to expiration of the license. Expired licenses may be reinstated through February 28 of each year by filing a reinstatement application and paying the appropriate application and late fees.

(c) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any person engaged in money transmission through purchase, assignment, pledge or other disposition of voting shares of such money transmitter, except with the prior approval of the commissioner. Request for approval of the proposed acquisition shall be made by filing an application with the commissioner at least 60 days prior to the acquisition.

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

(1) The commissioner may 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 may also use a nationwide multi-state licensing system and registry for requesting and distributing any information regarding money transmitter licensing to and from any source so directed by the commis-

sioner. The commissioner may establish relationships or contracts with the nationwide multi-state licensing 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 the nationwide multi-state licensing system and registry. The commissioner may report violations of the law, as well as enforcement actions and other relevant information to the nationwide multi-state licensing system and registry. The commissioner may require any applicant or licensee to file reports with the nationwide multi-state licensing system and registry in the form prescribed by the commissioner.

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

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

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

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

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

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

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

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

(2) such person shall deposit and at all times keep on deposit with ~~the state treasurer, or~~ a bank in this state approved by the commissioner, cash or securities satisfactory to the commissioner in an amount not less than \$200,000. The commissioner may increase the amount of cash or securities required up to a maximum of ~~\$500,000~~ \$1,000,000 upon the basis of ~~the impaired financial condition of a person, as evidenced by a~~

~~reduction in net worth, financial losses or other relevant criteria as determined by the commissioner:~~

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

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

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

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

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

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

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

(g) The aggregate liability of the surety for all breaches of the conditions of the bond, in no event, shall exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. The commissioner or any aggrieved party may enforce claims against such deposit of cash or securities or surety bond. So long as the depositing person is not in violation of this act, such person shall be permitted to receive all interest and dividends on the deposit and shall have the right to substitute other securities satisfactory to the commissioner. If the deposit is made with a bank, any custodial fees shall be paid by such person.

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

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

~~(2)~~(3) For purposes of investigation, examination or other proceeding under this act, the commissioner may administer or cause to be administered oaths, subpoena witnesses and documents, compel the attendance of witnesses, take evidence and require the production of any document that the commissioner determines to be relevant to the inquiry.

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

Sec. 3. K.S.A. 2014 Supp. 9-510 is hereby amended to read as follows: 9-510. A licensee may engage in the business of money transmission at one or more locations in this state and through or by means of such agents as such licensee may designate and appoint from time to time subject to the following provisions:

~~(1)~~(a) No agent of a licensee shall be required to comply with the licensing provisions of this act.

~~(2)~~(b) Only a licensee may designate an agent. *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 this state.

~~(A)(c)~~ No agent shall appoint a subagent.

~~(B)~~ No person acting as an agent for an exempt entity shall be exempt from the licensing provisions of this act.

~~(3)~~ A person accepting a consumer's funds for transmission through an exempt entity is a money transmitter and subject to the provisions of this act.

(d) 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 provisions of this act.

~~(4)(e)~~ In conjunction with filing a renewal application, each applicant shall provide in the form and manner prescribed by the commissioner a complete list of its proposed or existing agents. At the end of each calendar quarter each licensee shall provide in the form and manner prescribed by the commissioner any additions or deletions in the licensee's agents.

~~(5)(f)~~ A written contract between a licensee and agent shall be maintained for inspection by the commissioner upon request and the written contract must contain provisions to the following effect:

~~(A)(1)~~ The agent must operate in full compliance with this act and the rules and regulations adopted thereunder.

~~(B)(2)~~ The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee.

~~(C)(3)~~ A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.

~~(6)(g)~~ The agent may only conduct activities authorized by the licensee in the written agreement, unless the agent is also a licensee.

~~(7)(h)~~ A licensee may 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. The licensee with the direct contractual relationship with the agents shall record the transactions as such licensee's own. If a shared agent sells new prepaid access cards on behalf of the licensee, then such licensee must directly contract with the agent and comply with all other requirements for designating an agent.

Sec. 4. K.S.A. 2014 Supp. 9-511 is hereby amended to read as follows: 9-511. The following persons shall be exempt from the provisions of this act:

(a) (1) Banks, building and loan associations, savings and loan associations, savings banks or credit unions organized under the laws of and subject to the supervision of this state, another state or the United States;

(2) *service providers that: (A) By written agreement with the exempt entities listed in (a)(1), provide for receipt and delivery of funds, network access, processing, clearance or settlement services in support of money transmission activities; and (B) 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;*

(3) the government of the United States and its agencies, including agents of the government and its agencies; or

~~(3)(4)~~ the state of Kansas and its agencies, including agents of the state of Kansas and its agencies.

(b) This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

Sec. 5. K.S.A. 2014 Supp. 9-513a is hereby amended to read as follows: 9-513a. The commissioner, after notice and an opportunity for a hearing, may deny, suspend, revoke or refuse to renew a license issued pursuant to this act, or issue a cease and desist order if the commissioner finds any of the following are applicable to any person who is required to be licensed under this act or such person's agent:

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

(b) the person may be financially unable to perform such person's

obligations or that the person has willfully failed without reasonable cause to pay or provide for payment of any of such person's obligations related to the person's money transmission business;

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

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

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

(f) the person or a senior officer, director or a stockholder who owns more than 10% of the money transmission business' outstanding stock has been convicted of a crime involving fraud, dishonesty or deceit;

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

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

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

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

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

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

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

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

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

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

Sec. 6. K.S.A. 2014 Supp. 9-513b is hereby amended to read as follows: 9-513b. (a) Each licensee under this act shall at all times possess permissible investments having an aggregate market value, calculated in accordance with *United States* generally accepted accounting principles, of not less than the aggregate amount of ~~all the~~ outstanding payment ~~instruments issued or sold~~ *liability held* by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment ~~instruments~~ *liability* does not exceed the bond or other security devices posted by the licensee pursuant to K.S.A. 9-509, and amendments thereto.

(b) *In the event of the bankruptcy of the licensee, the permissible investments shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee all persons whose money or monetary value is considered outstanding, even if such permissible investments are commingled with other assets of the licensee.*

Sec. 7. K.S.A. 2014 Supp. 9-2201 is hereby amended to read as follows: 9-2201. As used in this act:

(a) "Bona fide office" means an applicant's or licensee's principal place of business ~~which meets all of the following requirements~~ *with an office that:*

(1) ~~The office~~ *Is located in this state;*

(2) ~~the office~~ *is not located in a personal residence;*

- (3) ~~the office~~ has regular hours of operation;
- (4) ~~the office~~ is accessible to the public;
- (5) ~~the office~~ is leased or owned by the licensee and serves as an office for the transaction of the licensee's mortgage business;
- (6) ~~the office~~ is separate from any office of another registrant; and
- (7) *is accessible to* all of the licensee's books, records and documents ~~are accessible through that office.~~

(b) "Branch office" means a place of business, other than a principal place of business, where mortgage business is conducted, and which is licensed as required by this act.

(c) "Commissioner" means the ~~Kansas~~ state bank commissioner.

(d) "License" means a license issued by the commissioner to engage in mortgage business as a mortgage company.

(e) "Licensee" means a person who is licensed by the commissioner as a mortgage company.

(f) "Loan originator" means an individual:

(1) Who engages in mortgage business on behalf of a single mortgage company;

(2) whose conduct of mortgage business is the responsibility of the licensee;

(3) who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain or in the expectation of compensation or gain; and

(4) whose job responsibilities include contact with borrowers during the loan origination process, which can include soliciting, negotiating, acquiring, arranging or making mortgage loans for others, obtaining personal or financial information, assisting with the preparation of loan applications or other documents, quoting loan rates or terms; or providing required disclosures. It does not include any individual engaged solely as a loan processor or underwriter.

(g) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction and subject to the supervision and instruction of a person registered or exempt from registration under this act.

(1) For purposes of this subsection, the term "clerical or support duties" may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a loan originator.

(h) "Nationwide mortgage licensing system and registry" means 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.

(i) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling; or arranging for others; or offering to solicit, place, negotiate, acquire, sell or arrange for others, mortgage loans in the primary market.

(j) "Mortgage company" means a person engaged in mortgage business from a principal place of business or branch office, which has been licensed as required by this act.

(k) "Mortgage loan" means a loan or agreement to extend credit made to a natural person which is secured by a first or second mortgage, deed of trust, contract for deed or other similar instrument or document representing a security interest or lien, *except as provided for in K.S.A.*

60-1101 through 60-1110, and amendments thereto, upon any lot intended for residential purposes or a one-to-four family dwelling as defined in ~~section 103(v) of the truth in lending act~~, 15 U.S.C. § 1602~~(v)~~(w), located in this state, occupied or intended to be occupied for residential purposes by the owner, including the renewal or refinancing of any such loan.

(l) “Person” means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

(m) “Primary market” means the market wherein mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other means.

(n) “Principal place of business” means a licensed place of business where mortgage business is conducted, which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed.

(o) “Promotional items” means pens, pencils, hats and other such novelty items.

(p) “Registrant” means any individual who holds a valid registration to conduct mortgage business in this state as a loan originator.

(q) “Unique identifier” means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 8. K.S.A. 2014 Supp. 9-1111 is hereby amended to read as follows: 9-1111. The general business of every bank shall be transacted at the place of business specified in ~~its~~ *the bank's* certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 9-1135, and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to ~~subsection (25) of~~ K.S.A. 9-1101(25), and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive deposits under ~~subsection (28) of~~ K.S.A. 9-1101(28), and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term “branch bank” means any office, agency or other place of business located within this state, other than the place of business specified in the bank’s certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

(b) establishment of a new branch or relocation of an existing branch for eligible banks:

(1) After first applying for and obtaining the approval of the commissioner, an eligible bank incorporated under the laws of this state, may establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state;

(2) the application shall include the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by ~~it~~ *the proposed branch bank*, the personnel and office facilities to be provided at the proposed branch bank and other information the commissioner may require;

(3) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed branch bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that ~~it~~ *such bank* is a branch bank of the applicant bank;

(4) the application shall include proof of publication of notice that

the applicant bank intends to file or has filed an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(5) upon receipt of the application, and following expiration of the comment period, the commissioner may hold a hearing in the county in which the applicant bank seeks to operate the branch bank. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner's designee, in support of or in opposition to the branch bank. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner;

(6) if the commissioner determines a public hearing is not warranted, the commissioner shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. If the commissioner finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the new branch or relocation shall be granted, otherwise, ~~it~~ *the relocation* shall be denied;

(7) within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the Kansas judicial review act;

(c) *the* establishment of a new branch or relocation of an existing branch for banks which do not meet the definition of "eligible bank" *shall require that:*

(1) After first applying for and obtaining the approval of the state banking board, a bank incorporated under the laws of this state, which does not meet the definition of "eligible bank," may establish and operate one or more branch banks, or relocate an existing branch bank, anywhere within this state;

(2) an application under paragraph (1) of this subsection, to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

~~(3) the application shall include~~ (A) Estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

~~(4) the application shall include~~ (B) the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the

name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank; and

~~(5) the application shall include~~ (C) proof of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

~~(6)~~(3) upon receipt of an application meeting the ~~above~~ requirements of *paragraph (2)*, and following the expiration of the comment period, within 60 days the state banking board may hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 10 days prior to the meeting of the board at which the application will be considered;

~~(7)~~(4) the state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the application shall be granted, otherwise; the application shall be denied; and

~~(8)~~(5) any final action of the board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act upon the petition of the applicant or any adversely affected or aggrieved person who provided written comments during the specified comment period;

(d) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(e) branch banks which have been established and are being maintained by a bank at the time of ~~its~~ *the branch bank's* merger into or consolidation with another bank or at the time ~~its~~ *such branch bank's* assets are purchased and ~~its~~ *the branch bank's* liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

(f) any state bank or national banking association may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share ~~its~~ *the remote service unit's* use

and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with ~~its~~ *the remote service unit's* development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and ~~their~~ *the bank's* customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(h) for purposes of this section, "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; ~~whether instantaneously or otherwise~~, 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 term shall 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, ~~but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified~~. Withdrawals by means of "offline" systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts;

(i) for purposes of this section, "eligible bank" means a state bank that meets the following criteria:

- (1) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;
- (2) meets the following three criteria for a well capitalized bank:
 - (A) Has a total risk based capital ratio of 10% or greater;
 - (B) has a tier one risk based capital ratio of 6% or greater; and
 - (C) has a leverage ratio of 5% or greater; and
- (3) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with ~~its~~ *the bank's* primary federal regulator or the office of the state bank commissioner.

New Sec. 9. There is hereby established an enabling savings program and such program shall be known and may be cited as the Kansas ABLE savings program. The purpose of the Kansas ABLE savings program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds to support the individual with a disability and to provide guidelines for the maintenance of such accounts.

New Sec. 10. As used in this act:

(a) "Account" or "ABLE savings account" means an individual savings account established in accordance with the provisions of this act.

(b) "Account owner" means the person who enters into an ABLE savings agreement pursuant to the provisions of this act. The account owner must also be the designated beneficiary. A conservator or guardian may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement.

(c) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(d) "Designated beneficiary" means a Kansas resident whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary.

(e) "Eligible individual" means an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability oc-

curred before the date on which the individual attained age 26, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

(f) “Financial organization” means an organization authorized to do business in the state of Kansas and is:

- (1) Licensed or chartered by the commissioner of insurance;
- (2) licensed or chartered by the state bank commissioner;
- (3) chartered by an agency of the federal government; or
- (4) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(g) “Guardian” means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(h) “Management contract” means the contract executed by the treasurer and a financial organization selected to act as a depository and manager of the program.

(i) “Member of the family” has the meaning ascribed thereto in section 529A of the federal internal revenue code of 1986, as amended.

(j) “Nonqualified withdrawal” means a withdrawal from an account which is not:

- (1) A qualified withdrawal; or
- (2) a rollover distribution.

(k) “Program” means the Kansas ABLE savings program established pursuant to this act.

(l) “Program manager” means a financial organization selected by the treasurer to act as a depository and manager of the program.

(m) “Qualified disability expense” means any qualified disability expense included in section 529A of the federal internal revenue code of 1986, as amended.

(n) “Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(o) “Rollover distribution” means a rollover distribution as defined in section 529A of the federal internal revenue code of 1986, as amended.

(p) “Savings agreement” means an agreement between the program manager or the treasurer and the account owner.

(q) “Secretary” means the secretary of the United States treasury.

(r) “Treasurer” means the state treasurer.

New Sec. 11. (a) The treasurer shall implement and administer the program under the terms and conditions established by this act. In furtherance of such implementation and administration, the treasurer shall have the authority and responsibility to:

- (1) Develop and implement the program in a manner consistent with the provisions of this act;
- (2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;
- (3) seek rulings and other guidance from the secretary and the federal internal revenue service relating to the program;
- (4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529A of the federal internal revenue code of 1986, as amended;
- (5) charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;
- (6) develop marketing plans and promotion material;
- (7) establish the methods by which the funds held in accounts shall be dispersed;
- (8) establish the method by which funds shall be allocated to pay for administrative costs;
- (9) do all things necessary and proper to carry out the purposes of this act;
- (10) promulgate rules and regulations necessary to effectuate the provisions of this act;
- (11) make an annual evaluation of the ABLE savings program and prepare an annual report of such evaluation to be provided to the governor, the senate and the house of representatives; and
- (12) notify the secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the secretary.

(b) The treasurer may 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 ABLE program.

New Sec. 12. (a) The treasurer may implement the program through use of financial organizations as account depositories and managers. The treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The treasurer may select more than one financial organization and investment instrument for the program. The treasurer shall select as program depositories and managers the financial organization, from among the bidding financial organizations, that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

- (1) Financial stability and integrity of the financial organization;
- (2) the safety of the investment instrument being offered;
- (3) the ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (4) the financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (5) the fees, if any, proposed to be charged to the account owners;
- (6) the minimum initial deposit and minimum contributions that the financial organization will require;
- (7) the ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and
- (8) other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this act. Any management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of this act and any actions not contrary to its contract to manage the program to qualify as a "qualified ABLE program" as defined in section 529A of the federal internal revenue code of 1986, as amended;
- (2) keep adequate records of each account, keep each account segregated from each other account and provide the treasurer with the information necessary to prepare the statements required by section 13, and amendments thereto;
- (3) compile and total information contained in statements required to be prepared under section 13, and amendments thereto, and provide such compilations to the treasurer;
- (4) if there is more than one program manager, provide the treasurer with such information as is necessary to determine compliance with section 13, and amendments thereto;
- (5) provide the treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this act, and section 529A of the federal internal revenue code of 1986, as amended;
- (6) hold all accounts for the benefit of the account owner or owners;
- (7) be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the treasurer;
- (8) provide the treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and
- (9) ensure that any description of the program, whether in writing or

through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this act.

(c) The treasurer may:

(1) Enter into such contracts as it deems necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the treasurer has any reason to be concerned about the financial position, the recordkeeping practices or the status of accounts of such program depository and manager; and

(3) terminate or not renew a management agreement. If the treasurer terminates or does not renew a management agreement, the treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(d) The treasurer, the department for children and families, the department of health and environment and the department for aging and disability services are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

New Sec. 13. (a) Any ABLE savings accounts established pursuant to the provisions of this act shall 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 may have only one account. The treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the treasurer and contain the:

(1) Name, address and social security number of the account owner;

(2) name, address and social security number of the designated beneficiary, if the account owner is the beneficiary's conservator or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the treasurer may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by section 529A of the federal internal revenue code of 1986, as amended, or any rules and regulations promulgated by the secretary pursuant to this act.

(c) Contributions to ABLE savings accounts only may be made in cash. The treasurer or program manager shall reject or promptly withdraw contributions:

(1) In excess of the limits established pursuant to subsection (b); or

(2) the total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to K.S.A. 75-640 et seq., and amendments thereto; or

(B) designated beneficiary is not an eligible individual in the current calendar year.

(d) (1) An account owner may:

(A) Change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the treasurer; and

(B) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in section 529A of the federal internal revenue code of 1986, as amended.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(e) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(2) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contribu-

tions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the treasurer shall require to be reported to the account owner.

(3) Statements and information relating to accounts shall be prepared and filed to the extent required by this act and any other state or federal law.

(f) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account:

(A) Shall be exempt from attachment, execution or garnishment as provided by K.S.A. 60-2308, and amendments thereto; and

(B) may be claimed by the Kansas medicaid plan only after the death of the designated beneficiary subject to limitations imposed by the secretary.

New Sec. 14. (a) Nothing in this act shall create or be construed to create any obligation of the treasurer, the state or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

(1) Return of principal;

(2) rate of interest or other return on any account; or

(3) payment of interest or other return on any account.

(b) The treasurer may promulgate rules and regulations to provide that every contract, application or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the state and that the principal deposited and the investment return are not guaranteed by the state.

New Sec. 15. (a) The Kansas ABLE savings program trust fund is hereby established in the state treasury. The fund shall be utilized if the treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. Such fund shall consist of any moneys deposited by contributors in accordance with this act which are not deposited directly with the program manager. All interest derived from the deposit and investment of moneys in such savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such savings trust fund shall remain therein and not be credited or transferred to the state general fund or to any other fund.

(b) (1) The Kansas ABLE savings expense fund is hereby established in the state treasury. The fund shall consist of moneys received from the ABLE savings program manager, or any governmental or private grants and any state general fund appropriations, if any, for the program.

(2) All expenses incurred by the treasurer in developing and administering the ABLE savings program shall be payable from the Kansas ABLE savings expense fund.

Sec. 16. K.S.A. 2014 Supp. 9-508, 9-509, 9-510, 9-511, 9-513a , 9-513b, 9-1111 and 9-2201 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.