

**SENATE BILL No. 372**

By Committee on Financial Institutions and Insurance

2-2

1 AN ACT concerning the Kansas money transmitters act; amending K.S.A.  
2 2011 Supp. 9-508, 9-509, 9-510, 9-511, 9-512, 9-513, 9-513a and 9-  
3 513c and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 9-508 is hereby amended to read as  
7 follows: 9-508. As used in this act:

8 (a) *"Agent" means an entity or person designated by the licensee, or*  
9 *by an exempt entity, to engage in the business of transmitting money on*  
10 *behalf of the licensee, or an exempt entity, at one or more physical*  
11 *locations throughout the state or through the internet;*

12 (a) (b) *"commissioner" means the state bank commissioner;*

13 (b) (c) *"electronic instrument" means a card or other tangible object*  
14 *for the transmission or payment of money, including a stored value card or*  
15 *device which contains a microprocessor chip, magnetic stripe or other*  
16 *means for the storage of information, that is prefunded and for which the*  
17 *value is decremented upon each use, but does not include a card or other*  
18 *tangible object that is redeemable by the issuer in goods or services;*

19 (c) (d) *"monetary value" means a medium of exchange, whether or*  
20 *not redeemable in money;*

21 (d) (e) *"money transmission" means to engage in the business of the*  
22 *sale or issuance of payment instruments or of receiving money or*  
23 *monetary value for transmission to a location within or outside the United*  
24 *States by wire, facsimile, electronic means or any other means;*

25 (e) (f) *"outstanding payment instrument" means any payment*  
26 *instrument issued by the licensee which has been sold in the United States*  
27 *directly by the licensee or any money order or instrument issued by the*  
28 *licensee which has been sold by an agent of the licensee in the United*  
29 *States, which has been reported to the licensee as having been sold and*  
30 *which has not yet been paid by or for the licensee;*

31 (f) (g) *"payment instrument" means any electronic or written check,*  
32 *draft, money order, travelers check or other electronic or written*  
33 *instrument or order for the transmission or payment of money, sold or*  
34 *issued to one or more persons, whether or not such instrument is*  
35 *negotiable. The term "payment instrument" does not include any credit*  
36 *card voucher, any letter of credit or any instrument which is redeemable by*

1 the issuer in goods or services;

2 ~~(g)~~ (h) "permissible investments" means:

3 (1) Cash;

4 ~~(2) certificates of deposit or other debt obligations of a financial~~  
5 ~~institution, either domestic or foreign;~~

6 ~~(3) bills of exchange or time drafts drawn on and accepted by a~~  
7 ~~commercial bank, otherwise known as bankers' acceptances, which are~~  
8 ~~eligible for purchase by member banks of the federal reserve system;~~

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

12 ~~(5) investment securities that are obligations of the United States, its~~  
13 ~~agencies or instrumentalities, or obligations that are guaranteed fully as to~~  
14 ~~principal and interest of the United States, or any general obligations of~~  
15 ~~any state, municipality or any political subdivision thereof;~~

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

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

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

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

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

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

36 ~~(7) any demand borrowing agreement or agreements made to a~~  
37 ~~corporation or a subsidiary of a corporation whose capital stock is listed on~~  
38 ~~a national exchange;~~

39 (8) *receivables which are due to a licensee from its authorized such*  
40 *licensee's agents pursuant to a contract, which are not past due or doubtful*  
41 *of collection and which do not exceed in the aggregate 20% of the total*  
42 *required permissible investments pursuant to K.S.A. 9-513b, and*  
43 *amendments thereto; or*

1 (9) any other investment or security device approved by the  
2 commissioner.

3 ~~(i)~~ (i) "Person" means any individual, partnership, association, joint-  
4 stock association, trust, corporation or any other form of business  
5 enterprise ~~authorized to do business in this state~~; and

6 ~~(j)~~ (j) "stored value" means monetary value that is evidenced by an  
7 electronic record.

8 Sec. 2. K.S.A. 2011 Supp. 9-509 is hereby amended to read as  
9 follows: 9-509. (a) No person shall engage in the business of selling,  
10 issuing or delivering its payment instrument, check, draft, money order,  
11 personal money order, bill of exchange, evidence of indebtedness or other  
12 instrument for the transmission or payment of money or otherwise engage  
13 in the business of money transmission with a resident of this state, or,  
14 except as provided in K.S.A. 9-510, and amendments thereto, act as agent  
15 for another in the transmission of money as a service or for a fee or other  
16 consideration, unless such person obtains a license from the commissioner.

17 (b) An application for a license shall be submitted ~~on forms~~  
18 ~~prescribed by the commissioner. The application shall be accompanied by~~  
19 ~~an application fee as established by rules and regulations adopted by the~~  
20 ~~commissioner in the form and manner prescribed by the commissioner.~~  
21 *The application shall be accompanied by nonrefundable fees established*  
22 *by the commissioner for the license and each agent location. Such fees*  
23 *shall be due annually on July 1. The commissioner shall determine the*  
24 *amount of such fees to provide sufficient funds to meet the budget*  
25 *requirements of administering and enforcing the act for each fiscal year.*  
26 *For the purposes of this subsection, "each agent location" means each*  
27 *physical location within the state where money transmission is conducted,*  
28 *including, but not limited to, branch offices, authorized vendor offices,*  
29 *delegate offices, kiosks and drop boxes. A license shall be renewed by*  
30 *filing with the commissioner a complete application and nonrefundable*  
31 *application fees at least 30 days prior to expiration of the license as*  
32 *reflected on the face of the license certificate.*

33 In addition, each person submitting an application shall meet the  
34 following requirements:

35 (1) The net worth of such person shall be at all times not less than  
36 \$250,000, as shown by an audited financial statement and certified to by  
37 an owner, a partner or officer of the corporation or other entity ~~in a form~~  
38 ~~prescribed by the commissioner and filed in the commissioner's office~~  
39 ~~filed in the form and manner prescribed by the commissioner.~~ The  
40 commissioner may require any person to file a statement at any other time  
41 upon request;

42 (2) such person shall deposit and at all times keep on deposit with the  
43 state treasurer, or a bank in this state approved by the commissioner, cash

1 or securities satisfactory to the commissioner in an amount not less than  
2 \$200,000. The commissioner may increase the amount of cash or securities  
3 required up to a maximum of \$500,000 upon the basis of the impaired  
4 financial condition of a person, as evidenced by a reduction in net worth,  
5 financial losses or other relevant criteria as determined by the  
6 commissioner;

7 (3) in lieu of the deposit of cash or securities required by paragraph  
8 (2), such person may give a surety bond in an amount equal to that  
9 required for the deposit of cash or securities, in a form satisfactory to the  
10 commissioner and issued by a company authorized to do business in this  
11 state, which bond shall be payable to the office of the state bank  
12 commissioner and be filed with the commissioner. ~~The deposit of cash or~~  
13 ~~securities or surety bond shall be for the protection and benefit of~~  
14 ~~purchasers of money transmission services, purchasers or holders of~~  
15 ~~payment instruments furnished by such person or for the protection of~~  
16 ~~those for whom such person has agreed to act as agent in the transmission~~  
17 ~~of monetary value and to secure the faithful performance of the obligations~~  
18 ~~of such person in respect to the receipt, handling, transmission and~~  
19 ~~payment of monetary value. The aggregate liability of the surety for all~~  
20 ~~breaches of the conditions of the bond shall, in no event, exceed the~~  
21 ~~amount of such bond. The surety on the bond shall have the right to cancel~~  
22 ~~such bond upon giving 30 days' notice to the commissioner and thereafter~~  
23 ~~shall be relieved of liability for any breach of condition occurring after the~~  
24 ~~effective date of the cancellation. The commissioner or any aggrieved~~  
25 ~~party may enforce claims against such deposit of cash or securities or~~  
26 ~~surety bond. So long as the depositing person is not in violation of this act,~~  
27 ~~such person shall be permitted to receive all interest and dividends on the~~  
28 ~~deposit and shall have the right to substitute other securities satisfactory to~~  
29 ~~the commissioner. If the deposit is made with a bank, any custodial fees~~  
30 ~~shall be paid by such person; and~~

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

34 (c) ~~The commissioner shall have the authority to examine the books~~  
35 ~~and records of any person operating in accordance with the provisions of~~  
36 ~~this act at such person's expense to verify compliance with state and~~  
37 ~~federal law. The deposit of cash, securities or surety bond required by this~~  
38 ~~section shall be subject to:~~

39 (1) *Payment to the commissioner for the protection and benefit of*  
40 *purchasers of money transmission services, purchasers or holders of*  
41 *payment instruments furnished by such person, and those for whom such*  
42 *person has agreed to act as agent in the transmission of monetary value*  
43 *and to secure the faithful performance of the obligations of such person in*

1 *respect to the receipt, handling, transmission and payment of monetary*  
2 *value; and*

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

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

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

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

27 *Sec. 3. K.S.A. 2011 Supp. 9-510 is hereby amended to read as*  
28 *follows: 9-510. ~~Any person complying with the provisions of this act may~~*  
29 *~~engage in such business~~ A licensee may engage in the business of money*  
30 *transmission at one or more locations in this state and through or by means*  
31 *of such agents as such person may designate and appoint from time to*  
32 *time. A verified list of agents shall be furnished annually to the*  
33 *commissioner by persons operating hereunder, on a date prescribed by the*  
34 *commissioner. No such agent shall be required to comply with the*  
35 *licensing provisions of this act.*

36 *Sec. 4. K.S.A. 2011 Supp. 9-511 is hereby amended to read as*  
37 *follows: 9-511. ~~This act shall not apply to banks, building and loan~~*  
38 *~~associations, savings and loan associations, savings banks or credit unions~~*  
39 *~~organized under the laws of and subject to the supervision of this state,~~*  
40 *~~another state or the United States, or to the government of the United~~*  
41 *~~States and its agencies, or to the state of Kansas and its agencies. This act~~*  
42 *~~also shall not apply to the distribution, transmission or payment of money~~*  
43 *~~as a part of the lawful practice of law, bookkeeping, accounting or real~~*

1 ~~estate sales or brokerage or as an incidental and necessary part of any~~  
 2 ~~lawful business activity~~ This act shall not apply to:

3 (a) (1) Banks, building and loan associations, savings and loan  
 4 associations, savings banks or credit unions, including agents of any of  
 5 these business entities, organized under the laws of and subject to the  
 6 supervision of this state, another state or the United States;

7 (2) the government of the United States and its agencies, including  
 8 agents of the government and its agencies; or

9 (3) the state of Kansas and its agencies, including agents of the state  
 10 of Kansas and its agencies.

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

15 Sec. 5. K.S.A. 2011 Supp. 9-512 is hereby amended to read as  
 16 follows: 9-512. (a) *The commissioner has the power to issue an order to*  
 17 *address any violation of this act:*

18 (1) *Assessing a fine against any person who violates this act, or rules*  
 19 *and regulations adopted thereto, in an amount not to exceed \$5,000 per*  
 20 *violation;*

21 (2) *assessing the agency's operating costs and expenses for*  
 22 *investigating and enforcing this act;*

23 (3) *requiring the person to pay restitution for any loss arising from*  
 24 *the violation or requiring the person to disgorge any profits arising from*  
 25 *the violation;*

26 (4) *barring the person from future application for licensure pursuant*  
 27 *to the act; and*

28 (5) *requiring such affirmative action as in the judgment of the*  
 29 *commissioner which will carry out the purposes of this act.*

30 (b) *The commissioner may enter into a consent order at any time with*  
 31 *a person to resolve a matter arising under this act, rules and regulations*  
 32 *adopted thereto, or an order issued pursuant to this act.*

33 (c) Any person who knowingly violates any provision of this act shall  
 34 be guilty of a severity level 9, nonperson felony. Each transaction in  
 35 violation of this act and each day that a violation continues shall be a  
 36 separate offense ~~except that whenever a corporation shall violate any~~  
 37 ~~provision of this act, such violation shall be deemed to be also that of the~~  
 38 ~~Whenever a corporation violates any provision of this act, such violation~~  
 39 ~~shall be attributed to individual directors, officers; and agents of such~~  
 40 ~~corporation who shall who have authorized, ordered; or done performed~~  
 41 any of the acts constituting such violation ~~in whole or in part.~~

42 ~~(b)~~ (d) A corporation and its directors, officers, and agents may each  
 43 be prosecuted separately for violations of this act and the acquittal or

1 conviction of one such director, officer or agent shall not abate the  
2 prosecution of the others.

3 ~~(e) (e) Violations of this act also may be enjoined or the violators~~  
4 ~~ousted from continuing such violations by proceedings brought by the~~  
5 ~~county attorney of the proper county or by the attorney general, regardless~~  
6 ~~of whether or not criminal proceedings have been instituted~~ *Whenever it*  
7 *appears that a person has violated, or is likely to violate, this act, rules*  
8 *and regulations adopted thereunder, or an order issued pursuant to this*  
9 *act, then the commissioner may bring an action for injunctive relief to*  
10 *enjoin the violation or enforce compliance, regardless of whether or not*  
11 *criminal proceedings have been instituted. Any person who engages in*  
12 *activities that are regulated and require a license under this act shall be*  
13 *considered to have consented to the jurisdiction of the courts of this state*  
14 *for all actions arising under this act.*

15 Sec. 6. K.S.A. 2011 Supp. 9-513 is hereby amended to read as  
16 follows: 9-513. ~~(a) If any sentence, clause, provision or section of this~~  
17 ~~act or the applicability thereof to any person or circumstance shall be held~~  
18 ~~invalid, such invalidity shall not affect the validity of the remainder of this~~  
19 ~~act or its applicability to other persons or circumstances. It shall be~~  
20 ~~presumed conclusively that the legislature would have enacted the~~  
21 ~~remainder of this act without the sentence, clause, provision or section~~  
22 ~~held invalidly enacted or applied.~~

23 ~~(b) This act shall be interpreted by the commissioner for the purpose~~  
24 ~~of protecting the citizens of this state, against financial loss, who purchase~~  
25 ~~payment instruments or who give money or control of their funds or credit~~  
26 ~~into the custody of another person for transmission, regardless of whether~~  
27 ~~the transmitter has any office, facility, agent or other physical presence in~~  
28 ~~the state.~~

29 Sec. 7. K.S.A. 2011 Supp. 9-513a is hereby amended to read as  
30 follows: 9-513a. ~~(a) The commissioner shall not issue a license unless the~~  
31 ~~commissioner is of the opinion that the person will be able to and will~~  
32 ~~perform its obligations to purchasers of money transmission services and~~  
33 ~~purchasers, payees and holders of money orders sold by it and its agents,~~  
34 ~~and that the financial responsibility, character, reputation, experience and~~  
35 ~~general fitness of the person, its senior officers, directors and principal~~  
36 ~~stockholders are such to warrant belief that the business will be operated~~  
37 ~~efficiently, fairly and in the public interest.~~

38 ~~(b) The commissioner may, after notice and an opportunity for a~~  
39 ~~hearing, revoke a license if the commissioner finds:~~

40 ~~(1) The person may be financially unable to perform its obligations or~~  
41 ~~that the person has willfully failed without reasonable cause to pay or~~  
42 ~~provide for payment of any of its obligations related to the person's money~~  
43 ~~transmission business;~~

- 1       ~~(2) the person no longer meets a requirement for initial granting of a~~  
2 ~~license;~~
- 3       ~~(3) the person or a senior officer, director or a stockholder who owns~~  
4 ~~more than 10% of the money transmission business' outstanding stock has~~  
5 ~~been convicted of a crime involving fraud, dishonesty or deceit;~~
- 6       ~~(4) there has been entry of a federal or state administrative order~~  
7 ~~against the person for violation of any law or any regulation applicable to~~  
8 ~~the conduct of the person's money transmission business;~~
- 9       ~~(5) a refusal by the person to permit an investigation by the~~  
10 ~~commissioner;~~
- 11       ~~(6) a failure to pay to the commissioner any fee required by this act;~~  
12 ~~or~~
- 13       ~~(7) a failure to comply with any order of the commissioner~~ *The*  
14 *commissioner, after notice and an opportunity for a hearing, may deny,*  
15 *suspend, revoke or refuse to renew a license issued pursuant to this act, or*  
16 *issue a cease and desist order if the commissioner finds any of the*  
17 *following are applicable to any person who is required to be licensed*  
18 *under this act or such person's agent:*
- 19       *(a) The financial responsibility, character, reputation, experience and*  
20 *general fitness of the person, such person's senior officers, directors and*  
21 *principal stockholders are such to warrant the belief that the business may*  
22 *not be operated efficiently, fairly and in the public interest;*
- 23       *(b) the person may be financially unable to perform such person's*  
24 *obligations or that the person has willfully failed without reasonable*  
25 *cause to pay or provide for payment of any of such person's obligations*  
26 *related to the person's money transmission business;*
- 27       *(c) the person no longer meets a requirement for initial granting of a*  
28 *license;*
- 29       *(d) the person has filed with the commissioner any document or*  
30 *statement falsely representing or omitting a material fact;*
- 31       *(e) the person concealed a fact or a condition exists which would*  
32 *clearly have justified the commissioner's refusal to grant a license had the*  
33 *fact or condition been known to exist at the time the application for the*  
34 *license was made;*
- 35       *(f) the person or a senior officer, director or a stockholder who owns*  
36 *more than 10% of the money transmission business' outstanding stock has*  
37 *been convicted of a crime involving fraud, dishonesty or deceit;*
- 38       *(g) there has been entry of a federal or state administrative order*  
39 *against the person for violation of any rule and regulation applicable to*  
40 *the conduct of the person's money transmission business;*
- 41       *(h) the person refused to permit an examination or investigation by*  
42 *the commissioner;*
- 43       *(i) a failure to pay to the commissioner any fee required by this act;*



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

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

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

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

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

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

19       Sec. 8. K.S.A. 2011 Supp. 9-513c is hereby amended to read as  
20 follows: 9-513c. (a) Notwithstanding any other provision of law, all  
21 information or reports obtained *and prepared* by the commissioner in the  
22 course of licensing or examining a person engaged in money transmission  
23 business shall be confidential and may not be disclosed by the  
24 commissioner except as provided in subsection (b) or (c).

25       (b) The commissioner shall have the authority to share supervisory  
26 information, including *reports of* examinations, with other state or federal  
27 agencies having regulatory authority over the person's money transmission  
28 business and shall have the authority to conduct joint examinations with  
29 other regulatory agencies.

30       (c) The commissioner may provide for the release of information to  
31 law enforcement agencies or prosecutorial agencies or offices who shall  
32 maintain the confidentiality of the information.

33       (d) *The commissioner may accept a report of examination or*  
34 *investigation from another state or federal licensing agency, in which the*  
35 *accepted report is an official report of the commissioner. Acceptance of an*  
36 *examination or investigation report does not waive any fee required by*  
37 *this act.*

38       (e) Nothing shall prohibit the commissioner from releasing to the  
39 public a list of persons licensed or their agents or from releasing  
40 aggregated financial data on such persons.

41       ~~(e)~~ (f) The provisions of subsection (a) shall expire on July 1, 2016,  
42 unless the legislature acts to reauthorize such provisions. The provisions of  
43 subsection (a) shall be reviewed by the legislature prior to July 1, 2016.

1       Sec. 9. K.S.A. 2011 Supp. 9-508, 9-509, 9-510, 9-511, 9-512, 9-513,  
2 9-513a and 9-513c are hereby repealed.

3       Sec. 10. This act shall take effect and be in force from and after its  
4 publication in the statute book.