

HOUSE BILL REPORT

SHB 2636

As Passed House:
February 10, 2010

Title: An act relating to money transmitters.

Brief Description: Concerning money transmitters.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Santos, Kirby, Nelson and Kenney; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/14/10, 1/21/10 [DPS].

Floor Activity:

Passed House: 2/10/10, 96-1.

Brief Summary of Substitute Bill

- Requires persons or entities that sell, issue, or act as an intermediary for open loop stored value payment devices to be licensed as money transmitters.
- Modifies the financial responsibility requirements for money transmitters.
- Establishes volume as a basis for licensee assessments.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Rodne, Santos and Simpson.

Staff: Jon Hedegard (786-7127).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Financial Institutions (DFI) regulates the money transmission and currency exchange businesses (collectively referred to as money services) under the Uniform Money Services Act (Act).

Money transmission is the receipt of money for the purpose of transmitting or delivering the money to another location, whether inside or outside the United States. The transmission/delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Currency exchange is the exchange of the money of one government for the money of another government, or holding oneself out as being able to complete such an exchange. Various types of businesses are exempted from the definition.

Generally.

Money transmitters and currency exchangers must meet licensing requirements that are largely identical. However, money transmitters are subject to bonding and net worth requirements not applicable to currency exchangers. Also, currency exchangers do not need a license if total business revenues obtained from currency exchange do not exceed 5 percent.

Money Transmitter License Application.

An application for a money transmitter license contains specified information, including:

- a 10-year employment history of the designated responsible individual;
- fingerprints of the responsible individual, upon request by the Director of the DFI (Director);
- a list of any criminal convictions sustained by the responsible individual during the preceding 10 years;
- documentation that the proposed responsible individual either is a citizen of the United States or has the necessary legal work status as an immigrant;
- a list of the authorized delegates;
- a description of the source of the money or credit to be used in conducting the business;
- a description of any licensing problems in other states involving the responsible individual;
- information regarding any bankruptcy or receivership affecting the responsible individual;
- if the applicant is a business entity, specific additional information about the entity;
- and
- any other information required by the DFI by rule.

Prior to issuing a license, the Director must conduct an investigation of the applicant and find that it is in the best interests of the public to allow the applicant to engage in the money services business. The investigation must include:

- an examination of the applicant's background, financial profile, experience, competence, character, and general fitness; and
- a determination that neither the applicant nor its proposed employees are listed by the federal government as persons who pose a potential threat of committing terrorist acts or financing terrorist acts.

Certain entities are specifically exempted from the Act:

- governmental entities and agents, and those contracted to provide money services on behalf of governmental entities;
- the United States Postal Service;
- financial institutions and corporations organized under specified federal acts;
- federally regulated boards of trade;
- federally registered futures commission merchants;
- operators of payment systems that provide services to other exempted entities, with respect to wire transfers, credit cards, debit cards, etc.;
- registered securities broker-dealers;
- state licensed insurance companies, title insurance companies, or escrow agents; and
- persons involved in the issuance, sale, use, redemption, or exchange of stored value or payment instruments.

Assessments on Licensees.

A licensee must pay an annual assessment as established by rule of the Director.

Bonding Requirements.

Money transmitters are required to maintain a surety bond, or other acceptable security, in the amount of at least \$10,000 but not exceeding \$50,000 (the exact amount is determined in rule), plus an additional \$10,000 per business outlet, up to a maximum of \$500,000. The Director can increase the maximum required amount to \$1 million for a money transmitter if it is deemed necessary in order to protect the public interest. The purpose of the bond is to protect the interests of claimants against the business in the event they suffer losses due to a violation of law or rule.

Maintenance of Investment Portfolio.

Money transmitters are required to maintain a portfolio of permissible investments that are equal to the aggregate value of all outstanding money transmissions. The maintenance of these investments by a money transmitter is subject to regulation by the DFI.

Net Worth.

Money transmitters are required to maintain a net worth, set in rule, of at least \$10,000 but not exceeding \$50,000.

Delivery, Receipts, and Refunds.

Money transmitters must:

- transmit money to the designated recipient within 10 days of receipt;
- provide customers with a receipt showing the details of the transaction, including a breakdown of all fees;
- provide refunds within 10 days of receipt of a written request from a customer (subject to certain conditions); and
- include specified disclosures regarding the exchange rate on a customer receipt for an international money transmission transaction.

Prohibited Practices.

It is a violation of the Act for a money services provider or an employee to engage in specified prohibited practices, including:

- engaging in trade practices that are unfair or deceptive, including bait and switch advertising or sales practices;
- committing fraud or misrepresentation;
- creating false or deceptive documents or records; and
- failing to file reports or records required by law.

Money Laundering and Governmental Reporting Requirements.

A money services licensee must comply with:

- money laundering laws;
- record keeping laws; and
- suspicious transaction-reporting requirements.

Liability of Licensee.

A licensee is liable for violations of the Act committed by employees. A licensee's willful misconduct in supervising an employee, or willful avoidance of knowledge of an employee's activities, can result in administrative sanctions.

Examinations by the Director.

The Director may examine and investigate money service provider licensees. The Director:

- may examine all business records;
- has free access to the offices and places of business of the licensee;
- may compel the attendance and conduct examinations under oath of persons with knowledge relevant to an investigation;
- may compel the production of records and documents; and
- may issue subpoenas or subpoenas duces tecum to obtain information.

Disciplinary Actions.

The Director may take a wide range of regulatory actions for violations of the Act or rules to implement the Act. Subject to specific conditions, the Director may:

- issue a temporary or permanent order to cease and desist doing business;
- suspend, revoke, or condition a license;
- place a licensee in receivership;
- impose civil penalties;
- compel restitution; or
- remove an employee or officer from participation in the business.

Criminal Penalties.

There are criminal penalties for certain violations of the Act:

- false statements, material misrepresentations, or deliberate omissions in records required under the Act is a class C felony; and
- depending upon the circumstances, engaging in a money services business without a license can be either a misdemeanor or a gross misdemeanor.

Summary of Substitute Bill:

The definition of "money transmission" is expanded to include the selling, issuing, or acting as an intermediary for open loop stored value payment devices. This, in turn, applies the licensing and other provisions of the Act to persons or entities that sell, issue, or act as an

intermediary for open loop stored value payment devices unless they are otherwise exempt. The definition specifically does not include closed loop stored value payment devices.

"Closed loop stored value payment device" is defined as a "stored value device, when that value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Open loop stored value payment device" is defined as a "stored value device redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines."

"Stored value device" means "a card or other device that electronically stores or provides access to and is available for making payments to others."

New or Modified Licensing Exemptions.

A new exemption is created for a "stored value device seller or issuer when the funds on the device are covered by federal deposit insurance immediately upon sale or issue."

The existing stored value exemption is modified to the "issuance, sale, use, redemption, or exchange of closed loop stored value devices or of payment instruments by a person licensed under chapter 31.45 RCW."

The Director may waive the licensing provisions of the Act when the Director determines it necessary to facilitate commerce and protect consumers. The Director may adopt rules to implement this section.

Assessments on Licensees.

The provisions regarding assessments are modified. An annual assessment is based on the previous year's dollar volume in the state of:

- money transmissions;
- payment instruments;
- currency exchanges; and
- stored value card sales.

The total minimum assessment must be \$1,000 per year, and the maximum assessment may not exceed \$100,000 per year. The Director retains the ability to adopt rules on the subject.

Bonding Requirements.

The existing bond requirements are modified. The requirements are based on the previous year's money transmission dollar volume and the previous year's payment instrument dollar volume. The minimum surety bond is \$10,000, and not to exceed \$550,000. The Director may adopt rules to implement the bond requirements.

Maintenance of Investment Portfolio.

Money transmitters are required to maintain a portfolio of permissible investments that are at least equal to the aggregate value of the licensee's average outstanding money transmission liability. This liability means the sum of the daily amounts of a licensee's money

transmissions, as computed each day of the month divided by the number of days in the month.

A higher percentage of certain receivables are considered permissible investments. Any portion of a restricted asset is not a permissible investment. Restricted assets include surety bonds or any other pledged assets. The Director may establish other restricted assets by rule.

Net Worth.

Money transmitters are required to maintain a tangible net worth, set in rule, of at least \$10,000 but not exceeding \$3 million.

Reports.

A licensee must maintain monthly reports about permissible investments. A licensee must file certain reports with the appropriate federal agency and is not required to file that information with the DFI.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The DFI has worked very hard with the affected stakeholders to avoid any unintended consequences for licensees, consumers, and businesses. The Act was passed in 2003. This updates the Act. It provides greater consumer protections for people who transmit money. It also helped this state do its part to limit the potential for money laundering and terrorism. To do that, the bill includes regulation of stored value cards. An important aspect of the bill is that it will help small businesses. The banks have had trouble implementing some of the anti-terrorism regulations. This has impacted money transmitters and their consumers. Rigorous regulation by the state will help the federal government understand that money transmitters and their consumers are being overseen in an appropriate manner. The regulation of money transmission is a very complex area of regulation. The bill has two main purposes. First, it adjusts the fee structure. The current assessment is \$500 per office and \$50 per location. This bill sets up a minimum and maximum fee based on volume. One of the larger transmitters does over \$1 billion in volume and pays the same or potentially less than a very small transmitter with a fraction of the amount of business. This bill will reduce costs for all but one transmitter based in the state. The revised fee structure also means that money transmitters will fully pay for their regulation. Today, they are subsidized by other licensees of the DFI. The other part of the bill impacts open-loop cards. These are cards that disburse cash. They are not retailer-branded cards. They are cards where money can be loaded and the cash may be withdrawn somewhere else. This money is not generally insured and can be at risk for the consumer. There are also some adjustments to filings and solvency requirements. The electronic method of doing business for some money transmitter companies has led to a number of challenges. This bill helps clarify which laws are applicable to businesses. Money transmission is a lifeline from immigrant communities in

this state to relatives and friends in another country. Some of those countries have no government or no banking system. People who live there rely on remittances for food, medicine, shelter, and other needs. The DFI has worked very hard with the stakeholders. This bill is very necessary. Many immigrants send money home and many of the money transmitter businesses are owned by immigrants. Many of the laws created after 9/11 were necessary to protect the public. Regulators need to make sure that state businesses are not unduly penalized. This bill helps those businesses and the community. The fee adjustments help small businesses.

(Opposed) None.

Persons Testifying: Representative Santos, prime sponsor; Deb Bortner and Alex Ketter, Department of Financial Institutions; Himanshu Shekhar, DTP LLC; Mohamed Sheikh Hassan; Dahir Omar; Abdulahi Jama, One America; Abdirohman Jama and Ahdirezak Jama, East Africa Community Services; and Mark Greenberg, Money Transmitters Roundtable.

Persons Signed In To Testify But Not Testifying: None.