

HOUSE BILL REPORT

SHB 1455

As Amended by the Senate

Title: An act relating to licensing and regulating money transmission and currency exchange.

Brief Description: Licensing and regulating money transmission and currency exchange.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Santos, Kenney, Benson, Schual-Berke, Quall, O'Brien, Cooper, Berkey, Dunshee, Haigh, Morris, Sullivan, Skinner, Miloscia, Veloria, Delvin, Hatfield, Simpson and Wallace; by request of Department of Financial Institutions).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/4/03, 2/28/03 [DPS];
Appropriations: 3/5/03, 3/6/03 [DPS(FII)].

Floor Activity:

Passed House: 3/13/03, 96-0.
Senate Amended.
Passed Senate: 4/8/03, 48-0.

Brief Summary of Substitute Bill

- Creates a statutory scheme for the licensing and regulation of persons involved in the business of money transmission or currency exchange.
- Grants broad authority to the Department of Financial Institutions to regulate money transmitters and currency exchangers.
- Creates bonding, net worth, and solvency requirements for licensees.
- Provides protections for customers of licensees and defines prohibited practices.
- Creates criminal penalties for certain violations of the act.

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 Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority

Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Buck, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Amy Skei (786-7140).

Background:

Overview of the money transmitter industry: Since the events of September 11, 2001, the business of international money transmission has received a great deal of attention from government regulators, law enforcement authorities, and the media. Although banks are responsible for the vast majority of financial transactions involving money transmission, it is the services provided by "non-bank financial institutions" that have come under increased scrutiny. In fact, the term "money transmitter" has come to denote those non-bank financial institutions that provide various services relating to the transfer of funds from one individual or institution to another. Such funds may be transferred domestically or internationally, and the transfer can be accomplished via a wide variety of methods, including money order, check, e-mail, facsimile, telephone, or wire transfer.

In the United States, the use of money transmission services has grown dramatically during the last decade, due in large part to increasing reliance on such services by members of various ethnic and immigrant groups in order to conduct international money transfers. Studies indicate that the growth of the industry has been driven by recent immigrants transmitting funds back to their countries of origin, usually to family members. Accordingly, the marketing of the service is often directed at ethnic communities, most notably Spanish-speaking populations.

As of 1996, there were approximately 43,000 money transmission outlets in the United States. Approximately 34,830 (81 percent) of these outlets were operated by the two dominant players in the industry, Western Union and MoneyGram. Of the 8,000 outlets that were unaffiliated with the two dominant companies, approximately 6,000 were small, community-based businesses with ties to ethnic communities. These businesses consist of small outlets managed either as private businesses operating their own small networks, or as one-person agencies that conduct transactions on behalf of a money transmitter.

Federal regulation: The federal statutes and rules pertaining to money transmission businesses are narrow in scope and are designed to address law enforcement concerns relating to money laundering and national security. Most of the pertinent federal statutes are contained in the Bank Secrecy Act and the Money Laundering Suppression Act, as amended in October 2001 by the Patriot Act. These federal acts impose registration and reporting requirements on money transmitters, but do not comprehensively regulate the industry.

Regulation by the states: Although there are several federal regulations that are applicable to money transmitters, the federal government has made no attempt to impose a comprehensive, nationwide regulatory framework on the industry. Accordingly, it has been left to the states to enact broad, industry-wide regulatory schemes that comprehensively address licensing, solvency, and consumer protection concerns.

To date, approximately 35 states require licensing and have enacted comprehensive regulatory frameworks designed to govern their business activities. All of these states require that licensees pay licensing fees, obtain a surety bond, and maintain a minimum net worth as prescribed by statute. Washington does not presently require that money transmitters be licensed and does not have a statutory framework for the regulation of such businesses.

Summary of Substitute Bill:

I. Introduction

The Department of Financial Institutions (DFI) is granted broad authority regarding the licensing and regulation of money transmission and currency exchange businesses, which are collectively referred to as "money services." The statutory framework established under the act contains comprehensive provisions governing licensing, solvency requirements, business practices, state regulatory powers, administrative sanctions, and criminal penalties.

The act creates parallel statutory schemes for the regulation of those money transmission and currency exchange businesses not governed by the existing framework of state and federal regulations applicable to more traditional, commercial financial institutions. Such financial institutions are largely exempted from coverage under the bill, provided they are already subject to regulation under existing state or federal law.

The provisions of the bill apply only to those engaged in the business of "money transmission" or "currency exchange," as well as others involved in the business who fall within the definitions of "responsible individual" or "authorized delegate." Many entities that would otherwise be included within the statutory definition of these terms, and thus be subject to regulation under the bill, are specifically exempted.

II. Key Definitions

"Money transmission": The act of "money transmission" is defined as 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. The mere provision of online or telecommunications services is exempted from the definition.

"Money transmitter": A "money transmitter" is defined as one who engages in "money transmission."

"Currency exchange": The act of "currency exchange" is defined as 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.

"Currency exchanger": A "currency exchanger" is defined as one who engages in "currency exchange."

"Money services": "Money Services" means money transmission or currency exchange.

"Responsible individual": A "responsible individual" is an employee of a licensed money transmitter or currency exchanger and who has principal managerial authority over the conduct of business in this state.

"Authorized delegate": An "authorized delegate" is any individual that a licensed money transmitter or currency exchanger designates to engage in money transmission or currency exchange.

III. Exempted Entities

The following entities are specifically exempted from the regulatory requirements of the bill, whether or not they might otherwise fall under the definition of "money transmitter" or "currency exchanger":

- Governmental entities and agents, and those contracted to provide money services on behalf of governmental entities;
- 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.

IV. Licensing Requirements for Money Services Businesses

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 need not be licensed if total business revenues obtained from currency exchange do not exceed 5 percent.

License application: A person applying for a license must file an application with the DFI that 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;
- If the applicant is a business entity, extensive information about the entity, its history, financial condition, structure, personnel, etc.; and
- Any other information required by the DFI pursuant to administrative rule.

Investigation by the Director: Prior to issuing a license, the Director must conduct an investigation of the applicant which leads to a finding 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 the following steps:

- 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.

V. Bonding and Financial Requirements for Money Transmitters

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 to be determined via 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 should he deem it 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 extensive regulation by the DFI, so as to ensure that the interests of the public are protected in the event of the insolvency of the business.

Net worth: Money transmitters are required to maintain a net worth of at least \$10,000 or face regulatory action by the DFI.

VI. General Business Regulations

Delivery, receipts, and refunds: Money transmitters must comply with the following requirements regarding customer service:

- Money must be transmitted to the designated recipient within 10 days of receipt;
- Customers must be provided with a receipt showing the details of the transaction, including a breakdown of all fees; and
- Subject to certain conditions, refunds must be provided within 10 days of receipt of a written request from a customer.

Exchange rate disclosures: The receipt obtained by a customer pursuant to an international money transmission transaction must include specified disclosures regarding the exchange rate.

Money laundering and governmental reporting requirements: A money services provider must comply with all laws pertaining to money laundering, as well as federal record keeping 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.

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.

VII. Regulatory Powers of the DFI

Examinations by the Director: The Director is granted broad authority to conduct examinations and investigations of money service providers licensed under the act, and is granted specific powers in order to do so. This authority allows the Director to:

- Examine all business records, including those pertaining to accounts, finances, and business practices;
- Have free access to the offices and places of business of the licensee;
- Compel the attendance and conduct examinations under oath of persons with knowledge relevant to the investigation;
- Compel the production of records and documents; and
- When necessary, issue subpoenas or subpoenas duces tecum to obtain information.

Regulatory actions against licensees and authorized delegates: The Director is granted authority to take a wide range of regulatory actions for violations of the act or administrative rules, as well as: violations of criminal law; links to terrorist organizations or terrorist financing; fraud or misrepresentation; insolvency; or unsound business practices. 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 licensee in receivership;
- Impose civil penalties;
- Compel payment of restitution or require other curative measures; or
- Remove an employee or officer from participation in the business.

Administrative and rule-making powers: The Director is granted broad authority to interpret the act and to issue those rules as are necessary to fulfill the expressed intent of the Legislature.

Community outreach by Director: The Director is required to conduct outreach to small businesses and immigrant communities in order to:

- Enhance awareness of state and federal laws governing money services businesses;
- Increase compliance with pertinent laws and regulations; and
- Provide technical assistance to businesses subject to the act.

VIII. Criminal Penalties

Several new criminal offenses are created for violations of the act:

- False statements, material misrepresentations, or deliberate omissions in records required under the act constitute a class C felony;
- Depending upon the circumstances, engaging in a money services business without a license can be either a misdemeanor or a gross misdemeanor.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment deletes language providing the Department of Financial Institutions with broad discretionary authority to administer and interpret the act. The amendment also limits the department's rulemaking authority to those rules that are "clearly required" to govern the activities of licensees.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on October 1, 2003.

Testimony For: (Financial Institutions & Insurance) (Original bill) This bill is necessary to assist federal efforts to regulate the money transmitter industry. It creates a comprehensive regulatory scheme that is based on the model act. The bill is consistent with the laws of other states and its primary purpose is "safety and soundness." Key provisions in the bill include net worth and bonding requirements, criminal penalties, consumer protection, and anti-money-laundering regulations. The current version of the bill is the result of extensive outreach to the affected ethnic communities and endeavors to be sensitive to the needs of these communities. It should not present a significant barrier to the operation of small, community-based money transmitters.

Many ethnic communities depend on money transmitters to provide financial support for family members living in other countries. Money transmitters are particularly important to recent immigrants, since such immigrants often do not have ready access to the conventional banking system in order to transmit money. Huge amounts of money are sent abroad via the money transmitter system, although transaction fees retained by the transmitters absorb a large percentage of these funds. It is common for a money transmitter to charge a transaction fee of between 20 and 25 percent.

(In Support with Concerns) (Original bill) The exchange rate disclosures in the bill should be more comprehensive and violations of the act should be made violations of the Consumer Protection Act.

Testimony For: (Appropriations) The primary purpose of this bill is two-fold: 1) To protect consumers; and 2) to prevent the laundering of proceeds from illegal activities. The program would be entirely supported by license fees.

Testimony Against: (Financial Institutions & Insurance) None.

Testimony Against: (Appropriations) None.

Testified: (Financial Institutions & Insurance) (In support) Representative Santos, prime sponsor; Mark Greenberg and Ezra Levine, Non-Bank Funds Transmitters Group; and Mark Thomson, Department of Financial Institutions.

(With concerns) Brendan vonBriesen, Commission on Hispanic Affairs.

Testified: (Appropriations) Mark Thomson, Department of Financial Institutions.