

Date of Hearing: April 28, 2014

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Roger Dickinson, Chair
AB 2209 (Dickinson) – As Introduced: February 20, 2014

SUBJECT: Money Transmission Act.

SUMMARY: Makes various changes to the Money Transmission Act (MTA) Specifically, this bill:

- 1) Provides for a revised definition of "money transmission" by adding that it is:
 - a) A third party's acceptance of currency, funds, or other value from a payor and delivery of the currency, funds, or other value to the payee. "Money transmission" does not include a transaction in which the recipient of the currency, funds, or other value is an agent of the payee, and delivery of the funds to the agent satisfies the payor's obligation to the payee.
- 2) Specifies that the commissioner of the Department of Business Oversight (commissioner) may impose certain conditions on a license, approval, or order if it is necessary for the safety and soundness of the licensee, or necessary to maintain or enhance consumer protection.
- 3) Provides that in relation to reports that must be filed with the commissioner, that in addition to transaction volume, a licensee must report whether such money transmission activity occurred via mobile or other electronic application.
- 4) Extends the existing exemption from training agents for signs of elder abuse for licensees that offer services via the internet to those that offer services by mobile electronic application.
- 5) Specifies that the statutorily required "right to refund statement" is not required in cases where the customer sends the payment for goods or services in an e-commerce transaction.
- 6) Allows the statutorily required transmission receipt to be provided electronically for transactions that were initiated electronically and states that except for receipts provided electronically the receipt shall be in a minimum eight-point font.
- 7) Provides that in cases in which a licensee does not operate out of a branch office and instead uses the internet or a mobile application then the commissioner may authorize alternative disclosures concerning rates, fees and other details about the licensee.
- 8) Specifies that currently required complaint notice posting within a branch office location may be substituted with an alternative notice authorized by the commissioner in the event the licensee or agent conducts money transmission activity via an Internet Web site or mobile application.
- 9) Requires licensees to maintain any other records, not already required by statute, if required by the commissioner.

- 10) Clarifies that the guidance offered to prospective applicants by the commissioner is informal guidance and that such guidance will be based on information supplied by the applicant.
- 11) Provides that at any time, if the commissioner deems it necessary for the general welfare of the public, he or she may exercise any power set forth in this division with respect to a money transmission business, regardless of whether an application for a license has been filed with the commissioner, a license has been issued, or, if issued, the license has been surrendered, suspended, or revoked.
- 12) Makes the following technical corrections to the MTA:
 - a) Makes changes to the Legislative findings and declarations;
 - b) Moves the definition of "material litigation" to the definition section of the statute;
 - c) Clarifies that credit unions that are exempted from licensing are those with an office in California;
 - d) Provides for revisions to mandatory receipt requirements and contents.
 - e) Corrects several outdated cross-references; and,
 - f) Changes the term "securities rating service" to "credit rating agency."

EXISTING STATE LAW provides for the MTA, Financial Code Sections 2000-2172 and provides for the following:

- 1) Defines "payment instrument" as a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliates.
- 2) Defines "receiving money for transmission" or "money received for transmission" as receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value.
- 3) Defines "stored value" as monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliates, except to the extent required by applicable law to be redeemable in cash for its cash value.
- 4) Requires licensing for domestic money transmittal services.

- 5) Provides for regulation of non-bank issued stored value cards that may be offered by licensees.
- 6) Prohibits a person from engaging in the business of money transmission in California or advertising, soliciting, or holding itself out as providing money transmission unless licensed.
- 7) Requires specified information to be included in an application for a license which shall be in the form proscribed by the commissioner.
- 8) Authorizes the commissioner to conduct an examination of an applicant, at the applicant's expense, and would require the commissioner to approve an application for a license if the commissioner makes specified findings, including that the applicant has adequate net worth and is competent to engage in the business of receiving money for transmission. In order to meet the net worth requirements a licensee that sells or issue payment instruments or stored value must maintain securities on deposit on a surety bond of no less than \$500,000 or 50% of the average daily balance of outstanding payment instruments and stored value in California. A licensee engaged in money transmission must either maintain securities or a surety bond not less than \$250,000 and no more than \$2,000,000.
- 9) Requires licensees to file audit reports with the commissioner within 90 days after the end of each fiscal year.
- 10) Imposes various fees and would require the commissioner to levy assessments on licensees for the purposes of administering these provisions regulating money transmission including:
 - a) A \$5,000 application fee;
 - b) An annual license fee of \$2,500;
 - c) An annual branch office fee of \$125 per branch office;
 - d) An annual \$25 fee for each branch employee; and,
 - e) For licensees that sell or issue payment instruments, an annual assessment based on the volume and aggregate face amounts of payment instruments and stored value issued or sold in California.
- 11) Provides that an applicant shall possess, and a licensee shall maintain at all times, tangible shareholder's equity of two hundred fifty thousand dollars (\$250,000) to five hundred thousand dollars (\$500,000), depending on estimated or actual transaction volume, as determined by the commissioner based on the factors listed below in a through k. The commissioner may increase the amount of net worth required of an applicant or licensee if the commissioner determines, with respect to the applicant or licensee, that a higher net worth is necessary to achieve the purposes of this division based on the factors described in subdivision (c). When making a determination, the commissioner shall consider the following factors:
 - a) The nature and volume of the projected or established business;

- b) The number of locations at or through which money transmission is or will be conducted;
 - c) The amount, nature, quality, and liquidity of its assets;
 - d) The amount and nature of its liabilities;
 - e) The history of its operations and prospects for earning and retaining income;
 - f) The quality of its operations;
 - g) The quality of its management;
 - h) The nature and quality of its principals;
 - i) The nature and quality of the persons in control;
 - j) The history of its compliance with applicable state and federal law; and,
 - k) Any other factor the commissioner considers relevant.
- 12) Gives the commissioner authority to require a licensee to write down any asset held by the licensee to a valuation that will represent its then fair market value. Any receivable or debt due to a licensee that is past due and unpaid for the period of one year shall be charged off, unless it is well secured or is in process of collection.
- 13) Specifies that the aggregate value of a licensee's accounts receivable, excluding money transmission receivables, loans or extensions of credit to any one person, or that person's affiliates, cannot exceed 50% of the licensee's tangible shareholders' equity without the advanced written approval of the commissioner. Whenever such amount equals or exceeds 20% of the licensee's tangible shareholders' equity, the licensee shall maintain records evidencing such amount and any security or other source of payment for the amount owed, and such other records as the commissioner may require by order or regulation.
- 14) Requires a licensee to provide specified notices and disclosures to customers, including a notice relative to a customer's right to a refund, disclosures relating to rates of exchange, a notice indicating that payment instruments are not insured, and a notice providing information on making complaints to the commissioner against a licensee.
- 15) Requires licensees to maintain financial records for a 3-year period.
- 16) Mandates each licensee to file with the commissioner a certified copy of every receipt form used by it or by its agent for receiving money for transmission prior to its first use.
- 17) Authorizes the commissioner to suspend or revoke a license if the commissioner finds that a licensee or agent of a licensee has, among other things, violated the provisions of the MTA or engaged in fraud or unsound practices and would authorize the commissioner to assess specified civil penalties against a person that violates these provisions.

- 18) Makes it a crime for a person to engage in the business of money transmission without a license or for a person to intentionally make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under these provisions.
- 19) Exempts from licensing,
- a) The United States or a department, agency, or instrumentality thereof, including any federal reserve bank and any federal home loan bank;
 - b) Money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;
 - c) A state, county, city, or any other governmental agency or governmental subdivision of a state;
 - d) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank;
 - e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency;
 - f) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;
 - g) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from registration granted under the federal securities laws to the extent of its operation as such a provider;
 - h) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider;
 - i) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer; and,
 - j) A person that delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees. Notwithstanding this exemption, a person described herein that offers money transmission services or provides stored value cards directly to individual customers shall comply with this division to the extent of such activity.

- 20) If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:
- a) The applicant has adequate tangible shareholders' equity, as specified in Section 2040 of the Financial Code to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of money transmission;
 - b) The applicant, the directors and officers of the applicant, any person that controls the applicant and the directors and officers of any person that controls the applicant are of good character and sound financial standing;
 - c) The applicant is competent to engage in the business of money transmission;
 - d) The applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation; and,
 - e) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

EXISTING FEDERAL LAW

Federal Regulation E, the Electronic Funds Transfer Act (EFTA) was amended via the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to include regulation of international remittances and money transfer. Section 1073 of Dodd-Frank expanded the scope of EFTA to include requirements concerning remittance disclosures to consumers. The Consumer Financial Protection Bureau (CFPB) released draft rules that went into effect October 1, 2013. A brief description of the new requirements:

- 1) Money transmitters are required to provide customers with written pre-payment disclosures containing information about the specific transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient.
- 2) Money transmitters are required to provide a written receipt when payment is made. The receipt must include the information provided on the pre-payment disclosure, as well as additional information, such as the date of availability, the recipient's contact information, and information regarding the customer's error resolution and cancellation rights. As an alternative, the new money transmitter regulation allows money transmitters to give customers a single written disclosure prior to payment containing all of the information required on the receipt, so long as the money transmitter also provides proof of payment such as a stamp on the earlier document.
- 3) The pre-payment disclosures and receipts must be provided in English and in each of the foreign languages principally used by the money transmitter to advertise, solicit, or market money transfer services at a particular office. If you offer customers the ability to make money transfers using text message or a mobile application, the new money transmitter regulation provides additional guidance on how to provide the required disclosures.

- 4) If, (i) due to the laws of a recipient country or (ii) the method by which transactions are made in the recipient country, a money transmitter cannot determine certain amounts that are required to be disclosed, exceptions permit the money transmitter to disclose an estimate of the amount of currency to be received, rather than the actual amount.
- 5) Money transmitters are required to provide customers with a 30-minute cancellation period that allows a customer the opportunity to review both the prepayment disclosure and the receipt to ensure that the transfer was sent as the customer intended. If a customer requests, a money transmitter must promptly provide the customer a notice describing the customer's "error resolution" and cancellation rights, using specified language or substantially similar language. Even after the cancellation period has passed, customers will have a right to a refund or other remedy if an error occurs in a transaction.
- 6) In the event a customer timely requests the cancellation of a money transfer, the new money transmitter regulation requires money transmitters to provide customers with a refund, at no additional cost to the customer, the total amount of funds provided by the customer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the money transfer, within three business days of receiving the request to cancel the money transfer.

FISCAL EFFECT: Unknown

COMMENTS:

AB 2209 is a follow up to AB 786 (Dickinson), Chapter 533, Statutes of 2013. Last year, the Assembly Banking and Finance committee passed AB 786 with a vote of 12-0. AB 786 originated out of an Assembly Banking and Finance oversight hearing on March 11, 2013, titled, *Emerging Technology and the Money Transmission Act*, as well as, subsequent research on growing technological changes in the payments and money transmission industries. AB 786 made numerous changes to the MTA to update its application in a changing marketplace, but also ensure that it does not create unnecessary barriers to entry for new entities wishing to enter the payments space. The rise of mobile applications to transmit money and to purchase goods or services gave rise to several grey areas in the application of the MTA as the definition of "money transmission" is circular and open to very broad interpretation where any movement of money from one party to another party while using a third party intermediary could be interpreted as money transmission.

According to the author:

The rise of the mobile smart phone and tablet has helped drive and popularize the expanded use of mobile payment applications. Additionally, consumers are expanding their use of apps and online platforms that collect and hold their financial data for purpose of making retail purchases more convenient, or even to send money to family and friends. This expansion has raised numerous questions about the progress of payments technology and the role of our existing state and federal laws to keep up with these technologies.

The lessons learned from AB 786 of 2013 and two oversight hearings on this issue brought about the changes proposed in AB 2209. AB 2209 provides for further clarification to the money transmission act through updating and revising its application as it relates to various payment platforms. The Money Transmission Act is California's legal framework for the growing payments world and potentially developments in cryptocurrency.

AB 2209 continues the work of updating the MTA through several technical changes, as well as, a small number of substantive changes. The following are descriptions of the major policy changes within AB 2209:

Definition of "Money Transmission"

Current law provides that money transmission includes 1) selling or issuing payment instruments; 2) Selling or issuing stored value; or 3) receiving money for transmission. The third aspect of the definition is cause for confusion. At best the current definition is a circular explanation. At worst, it is a complicated and overly broad definition that fails to address the nuances of the modern payments economy.

AB 2209 clarifies that money transmission does not include a transaction in which the recipient of the payment (currency or other value) is an agent of the payee and delivery of payment satisfies the payor's obligation to the payee. What does this mean in less complex terms? Many entities may use third parties, or due to their relationship with vendors may themselves be third parties that provide payment facilities for the purchase of goods or services. For example, a consumer goes to an online marketplace to purchase an item. To the consumer, it may appear from all visible evidence that the online marketplace is both providing the item and accepting the payment for the item. On the contrary, the item is provided by a third party merchant, potentially unseen by the consumer. In this scenario, the consumer's payment obligation and potential future warranty, return, or exchange issues are the responsibility of the online merchant, not the third party merchant. In this example, under a broad interpretation of the literal meaning of the statute the transaction could be considered money transmission activity. AB 2209 clarifies, through the use of the "payee" and "agent" language that online marketplace transactions are not money transmission.

At least four states have formally recognized the payee-agent exception to the definition of money transmitter. In New York, Nevada and Ohio, the exception has been codified. *See* N.Y. Banking Law § 641.1; Nev. Rev. Stat. Ann. § 671.040; Ohio Rev. Code Ann. § 1315.01(G). In Texas, the exception is reflected in published regulation. *See* 7 Tex. Admin. Code § 33.3.

In explaining the exception, New York has drawn precisely the distinction drawn above. In staff guidance, New York's regulator of money transmitters has explained that a firm can only qualify for the exception if it has a contractual relationship with the funds recipient in which the recipient explicitly authorizes the intermediary as its agent for payment. *See, e.g.,* New York State Bank Department, Staff Interpretation, "NYSBL 640 & 641" (April 24, 2007), *available at* http://www.dfs.ny.gov/legal/interpret_opinion/banking/lo070424.htm. As explained above, a written or oral understanding among the sender of funds and the intermediary about the intermediary's status as an agent of the payee does not determine the scope of the relationship between the intermediary and the receiver of funds. Only a pre-existing contractual relationship

between the intermediary and the funds recipient will permit recognition of the intermediary as an agent of the payee.

Use of mobile applications

As money transmission activity has increased via mobile applications or Internet based sites, it is necessary to change various requirements concerning notices and receipts that originally were only contemplated in a face-to-face transaction. First, it provides that licensees that exclusively offer their services via mobile electronic applications are exempted from the requirement to train agents for monitoring for signs of elder abuse. Under current law those licensees that offer services via an Internet Web site are already exempt.

Existing law requires that each branch office location of a licensee must disclose the exchange rates, fees and commissions, post a sign with the name of the licensee and provide a posting concerning where consumers may direct complaints. AB 2209 clarifies that in cases in which the licensee uses an Internet website or mobile application, the commissioner may authorize an alternative disclosure.

Receipt requirements

Existing law requires that a consumer receive a receipt that states they have a right to a refund if the licensee does not forward the money received within 10 days. This receipt makes sense in a traditional money transmission transaction, but does not make sense if the transmission was made for an e-commerce transaction. AB 2209 would provide that the receipt is not required in an e-commerce transaction and that it may be provided electronically if the consumer opts for an electronic receipt.

Guidance

AB 786 authorized the commissioner to offer guidance to prospective applicants regarding licensing requirements, including the potential net worth that may be required of an applicant. This change was intended to allow applicants to received informal guidance that could be helpful during the official application process. The changes proposed in AB 2209 would clarify that the guidance is informal and only based on the information actually provided by the applicant concerning its plan to do business.

Technical amendments:

Section 2105 of the Financial Code requires that licensees prominently post on their premises a notice of where consumers with complaints should be directed. This section currently references the Department of Financial Institutions, which no longer exists. Amendments would strike this reference and replace with "Department of Business Oversight."

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Retailers Association

TechAmerica
TechNet

Opposition

None on file.

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