

Date of Hearing: April 19, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

AB 2789 (Committee on Banking and Finance) – As Amended: April 12, 2010

SUBJECT: Money transmission.

SUMMARY: Creates the Money Transmission Act. Specifically, this bill:

- 1) Repeals the Transmitters of Money Abroad Law, the Issuers of Payment Instruments Law and the Issuers of Traveler's check law and creates a new unitary law, the Money Transmission Act.
- 2) Requires licensing for domestic money transmittal services.
- 3) Provides for regulation of non-bank issued stored value cards that may be offered by licensees.
- 4) Makes legislative declarations and findings on the use of money transmissions services and consumer protection.
- 5) 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 by the commissioner of the Department of Financial Institutions (DFI).
- 6) Requires specified information to be included in an application for a license which shall be in the form proscribed by the commissioner of DFI.
- 7) 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 CA. A licensee engaged in money transmission must either maintain securities or a surety bond not less than \$250,000 nor more than \$2,000,000.
- 8) Requires licensees to file audit reports with the commissioner within 90 days after the end of each fiscal year.
- 9) 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.
- 10) Establishes requirements in order for a licensee to appoint an agent to conduct money transmission on behalf of the licensee require a licensee to maintain specified eligible securities including:
- a) Cash;
  - b) Any deposit in an insured bank or an insured savings and loan association or insured credit union;
  - c) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States;
  - d) Any bond, note, or other obligation that is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and that is assigned an eligible rating by an eligible securities rating service;
  - e) Any bankers acceptance that is eligible for discount by a federal reserve bank;
  - f) Any commercial paper that is assigned an eligible rating by an eligible rating securities service;
  - g) Any bond, note, or other obligation or preferred stock that is assigned an eligible rating by an eligible securities rating service;
  - h) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1, et seq.), that holds itself out to investors as money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7);
  - i) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities;
  - j) Any account due to any licensee from any agent on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection; and,
  - k) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

- 11) 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.
- 12) Requires licensees to maintain financial records for a 3-year period.
- 13) 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.
- 14) 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 act or engaged in fraud or unsound practices and would authorize the commissioner to assess specified civil penalties against a person that violates these provisions.
- 15) 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.

EXISTING LAW: provides for the regulation and licensure of persons or entities engaged in the issuance of payment instruments (money orders), transmittal of money abroad, and issuance of travelers checks. These licensing laws are regulated and administered by DFI.

FISCAL EFFECT: Unknown

COMMENTS:

California is the last state that still requires three licenses for non-bank money service activity that are more often than not offered and conducted from the same location by the same licensee. For example, under current law a business that conducts money transmission services to foreign countries, issues money orders and sells traveler checks would be required to be licensed by three different licensing laws even though these three activities are closely related and at the same location.

AB 2789 goes one more step further by insuring that non-bank entities that transmit money domestically must also be licensed under the new Money Transmission Act. Additionally, with changes in technology, non-bank stored value cards are becoming a mainstream option and product for people who utilize money services transactions. This bill would close any loopholes in this technology by requiring that licensees have adequate net worth and reserve requirements when offering stored value and that DFI can exercise safety and soundness reviews for such products. The regulation of non-bank stored value goes one step further in this bill versus what banks currently have to do, and that is the requirement to have 100% reserve requirements for outstanding stored value. For the most part, the fee structure, licensing requirements, enforcement powers and other regulatory requirements currently exists within the existing licensing laws, with the exception of those areas where consumer protection is being enhanced.

As early as August 3, 2000 the National Conference of Commissioners on Uniform State Laws (NCCUSL) issued its first draft of a model act to provide uniform regulation for money services

business. One of the main drivers behind the creation of a uniform model act was to address concerns arising from potential money laundering activities. A final version of the act was ratified by NCCUSL on August 6, 2004. Alaska, Arkansas, Iowa, Vermont, Washington implemented the model act in its entirety. The majority of states have implemented models very similar to the one proposed in this legislation, in that its take certain provisions from the NCCUSL draft but does not propose to implement the whole document as is. Various market conditions and differences in regulatory environments make it necessary to take a more nuanced approach as outlined in AB 2789.

This bill is a product of discussions between the regulated industry, DFI and consumer groups. Committee staff is aware of ongoing discussions with all stakeholders to work out any remaining technical issues that may exist with this regulatory consolidation.

Related Legislation.

AB 1508 (Lieu), Chapter 242, Statutes of 2007 streamlined certain procedural requirements under the Money Transmitters Law, more closely align that law with laws governing the issuance of travelers checks and money orders, and give DFI greater ability to take prompt corrective action against licensed money transmitters found to be operating improperly.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumers Union – Support if Amended  
The Money Services Round Table (TMSRT)

Opposition

None on file.

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