

Date of Hearing: March 20, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1116 (Grayson) – As Introduced February 15, 2023

SUBJECT: Money Transmission Act

SUMMARY: Makes assorted changes to the California Money Transmission Act (CA MTA) and requires licensees to comply with these new or modified provisions beginning on January 1, 2025.

Specifically, **this bill:**

- 1) Adds or modifies definitions as follows:
 - a) “In California” or “in this state” is modified to specify that for a transaction requested electronically or by phone, the money transmission provider may determine if the person requesting the transaction is in California by relying on other specified information or documentation.
 - b) “Key individual” is added and means a natural person who is ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.
 - c) “Multistate licensing process” is added and means an agreement entered into by and among state regulators related to the coordinated processing of applications or notice and information requirements for a change in key individuals.
 - d) “NMLS” is added and means the Nationwide Multistate Licensing System and Registry developed by the Conference of State Banking Supervisors (CSBS) and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity.
 - e) “Payment instrument” is modified to clarify that the term does not include a credit card voucher, letter of credit, or an instrument that is redeemable by the issuer of goods or services provided by a franchisee of the issuer or not sold to the public but issued and distributed as part of a loyalty rewards or promotional program.
- 2) Exempts from the CA MTA a registered futures commission merchant under the federal commodities laws and a person that acts as an intermediary by processing money transmission between an entity that has directly incurred an outstanding money transmission obligation to a sender and the sender’s designated recipient, if that entity is properly licensed or otherwise exempt from the CA MTA and the entity bears sole responsibility to satisfy the outstanding money transmission obligation to the sender.
- 3) Clarifies the information about a licensee’s agent that a licensee must report through NMLS, including the agent’s mailing address and other states of business.
- 4) Replaces the CA MTA’s existing tangible shareholder’s equity requirement of between \$250,000 and \$500,000 (calculated based on transaction volume and specified factors) with a

requirement to maintain a net worth the greater of either \$100,000 or: 3.0% of total assets for the first \$100 million, 2.0% of additional assets for \$100 million to \$1 billion, and 0.5% of additional assets for over \$1 billion. The commissioner may exempt an applicant or licensee from this requirement.

- 5) Modifies the definition of “eligible security” as follows:
 - a) Specifies that “cash” includes cash in transit, cash in smart safes, and cash in licensee-owned facilities.
 - b) Clarifies that a deposit in a bank, loans association, or an insured credit union can include a deposit that is in an account held for the benefit of the licensee’s customers with a specified title.
 - c) Adds to the list of eligible securities a full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit within seven days of presentation of specified items. The letter of credit must:
 - i. Be issued by an insured depository financial institution, a foreign bank that is authorized by federal or state law to maintain a regulated and supervised branch in the state that bears an eligible rating or whose parent company bears an eligible rating.
 - ii. Be irrevocable, unconditional, and be indicated that it’s not subject to any outside condition or qualifications.
 - iii. Not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee.
 - iv. Contain an issue date and expiration date and expressly provide for an automatic extension, without a written amendment, for an additional period of one year from the present or future expiration date, unless the issuer of the letter notifies the commissioner at least 60 days before any expiration date that the letter of credit will not be extended.
- 6) Modifies the calculation of the aggregate value of a licensee’s eligible securities as follows:
 - a) Includes in the calculation, regardless of their relative share of total eligible securities, a money market fund that invests exclusively in obligations issued or guaranteed by the United States or any agency of the United States and a money market fund rated AAA by Standard and Poor’s Corporation or the equivalent rating from any eligible rating service.
 - b) Excludes the portion of the aggregate value of all eligible commercial paper, bonds, notes, or other obligations, or shares of an investment company in total that exceed 50% of the aggregate value of all securities owned by the licensee.
- 7) Requires a licensee adding or replacing a key individual to provide notice to the commissioner within 15 days after the effective date of the key individual’s appointment.

The commissioner may issue an notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual supports a determination by the commissioner that it is not in the best interest of the public or the licensee's customers to permit the individual to be a key individual of the licensee.

- 8) Specifies that before January 1, 2025, a licensee will not be subject to this bill's changes to the CA MTA to the extent it conflicts with the law in effect on December 31, 2023.

EXISTING LAW:

- 1) Provides the CA MTA, administered by the Department of Financial Protection and Innovation (DFPI), which requires licensure of persons engaged in the business of money transmission, as specified, unless the person is exempt (Financial Code Section 2000 et seq.).
- 2) Defines money transmission as any of the following: selling or issuing payment instruments, selling or issuing stored value, or receiving money for transmission (Financial Code Section 2003(q)).
- 3) Provides, in relevant part, that a money transmitter must own eligible securities with an aggregate market value that is the same as or more than all of its outstanding money received for transmission in the United States (Financial Code section 2081).

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose.**

According to the author:

AB 1116 is a good governance measure that aligns California's Money Transmission Act with model legislation developed by the Conference of State Banking Supervisors (CSBS). The CSBS model law was developed in coordination with state regulators and industry stakeholders to modernize outdated and inconsistent regulatory requirements that burden both companies and regulators. As the money transmission industry has evolved, it has become clear that conflicting requirements across the 50 states undermine efforts to consistently regulate the industry.

This bill incorporates selected provisions from this model law that will help the Department of Financial Protection and Innovation coordinate with other states and ease the compliance burden for the industry. Importantly, the strong consumer protections in California's Money Transmission Act, such as customer service requirements established in 2021, will not be affected.

- 2) **Money transmission in California**

Current state law requires any entity issuing or selling payment instruments (such as a check or money order), stored value, or money to become a licensed money transmitter. Through its Money Transmitter Division, DFPI licenses and regulates more than 100 companies, and

these licensees range from brick and mortar businesses offering money transfer services, such as Intermex Wire Transfer, to online or mobile payment companies, such as Square, Inc or Apple Cash. As part of the licensure process, a money transmitter must submit an audited financial statement, an Anti-Money Laundering or Bank Secrecy Act policy that details, sample documents such as receipts for transactions, organizational charts, business plan, and a surety bond.

Money transmitters must also comply with a number of disclosure and transparency requirements. For example, a licensee must include a receipt with specified information informing the customer of their right to a refund and how to contact DFPI to make a complaint.

Historically, a typical “money transmitter” was simply a money-wiring service with physical retail locations like Western Union. However, as technology has evolved and smartphones have become more commonplace, money transmitters increasingly include non-bank mobile payment applications (apps) such as PayPal’s Venmo and Square’s Cash App. These mobile apps have grown in popularity and make up a rising share of money transmission licensees.

3) **The CSBS Model Law.**

The CSBS is a national organization formed to advance the United States dual-banking system and to support state regulators in the advancement of state financial supervision. In August 2021, after a lengthy stakeholder and state regulator input process, the CSBS Board of Directors approved the Model Money Transmission Modernization Act (CSBS Model Law).¹ The CSBS describes the impetus for this model law as follows:

Changes in the money transmission industry have exposed unnecessary, outdated, and often conflicting state requirements across the 50 states and U.S. territories. These conflicting requirements have made it difficult 1) for regulators to consistently regulate money transmitters across state lines, 2) for companies to operate as state-licensed money transmitters across state lines, and 3) to defend the state regulatory system against federal preemption.

The CSBS notes on its website that common licensing and regulatory standards will add efficiencies to the multistate process, allowing states to leverage common practices, analysis, and data. For example, 50 separate set of standards and analyses exist to answer common questions like “who needs a license” and “how are permissible investments by a licensee calculated?” The CSBS Model law aims to provide common answers to these questions across states, which will make it easier for licensees as well as regulators who can share examination resources.

4) **Other states’ adoption of CSBS model law.**

Other states have already acted to incorporate the CSBS Model Law into their money transmission licensing programs. Because each state has a different money transmission law shaped by years of legislative history, some states have proposed

¹ Read more about the CSBS Model Law here: <https://www.csbs.org/csbs-model-money-transmission-modernization-act>

adopting individual components of the model law while others have proposed adopting the model law in its entirety. As of February 2023:

2023 CSBS Model Law Introductions	
Alaska (S.B.84)	Arkansas (H.B. 1438)
Georgia (H.B. 55)	Hawaii (S.B. 1325)
Illinois (H.B. 3479)	Indiana (S.B. 458)
Iowa (HSB 128, SSB 1102)	Maryland (COMAR 09.03.14)
Massachusetts (H.D. 2543)	Missouri (S.B. 633)
Nevada (A.B. 21)	New Hampshire (H.B. 522)
North Dakota (S.B. 2119)	South Dakota (S.B. 43)
Tennessee (S.B. 268)	Texas (S.B. 895)
West Virginia (H.B. 2676)	

CSBS Model Law Enactments (As of February 2023)	
Arizona (Ch. 236)	Connecticut (S.B. 268)
Georgia (Act 748)	Hawaii (S.B. 973)
Rhode Island (Banking Bulletin 2022-1)	Rhode Island (Banking Bulletin 2022-2)
South Dakota (S.B. 47)	Utah (S.B. 183)
West Virginia (Ch. 181)	

5) **How will the CA MTA change?**

AB 1116 makes selective changes to the CA MTA. According to the author, the proposed changes are meant to identify provisions in the CSBS Model Law that provide for administrative and regulatory efficiencies without compromising the CA MTA's consumer protections. Changes include:

- a) **New rules for "key individuals."** AB 1116 establishes new rules for a "key individual," which is a person responsible for establishing or directing policies and procedures of the licensee, including an executive officer, manager, director, or trustee. AB 1116 requires a licensee adding or replacing that individual to provide notice to DFPI within 15 days after the effective date of that individuals' appointment and establishes a process and timeline for DFPI to approve or reject that key individual's appointment.

- b) **Net worth requirement.** AB 1116 introduces a requirement that a licensee maintains a net worth in an amount based on total assets. Specifically, the licensee must maintain a net worth the greater of \$100,000 or the greater of the following: 3% of total assets for the first \$100 million, 2% of additional assets between \$100 million and \$1 billion, and 0.5% of assets over \$1 billion. This requirement replaces the CA MTA's tangible shareholder equity of \$250,000 to \$500,000 which is calculated based on a range of factors. Moreover, AB 1116 authorizes the commissioner to waive the net worth requirement.
- c) **Additional exemptions.** This bill adds two new exemptions to the CA MTA. The first is for payment processors, so long as specified conditions are met, and a registered futures commission merchant under the federal commodities laws.
- d) **Eligible securities.** Under the CA MTA, a money transmitter must own eligible securities with an aggregate market value that is the same as or more than all its outstanding transmission money received in the United States. The CA MTA also provides a list of what securities are allowed can be so as safeguard customer accounts and ensure the safety and soundness of money transmission activities. AB 1116 makes a number of changes to these provisions, including clarifying that cash can include cash in transit and cash in licensee-owned locations and allowing a licensee to use a letter of credit for which the state beneficiary is the commissioner. This letter of credit must be issued by a specified type of institution such as an insured depository financial institution and must be irrevocable and unconditional, among other conditions.

6) Virtual Currency

The CSBS Model Law contains an additional article related to virtual currency. The provisions in this portion of the model law are intended for those states that regulate virtual currencies (otherwise called cryptocurrencies, digital financial assets, or crypto assets) through their money transmission licensing laws. The CSBS Model Law contains similar definitions of "virtual currency" as model virtual currency legislation developed by the Uniform Law Commission (ULC).²

AB 1116 does not contain the CSBS Model Law's virtual currency article for a number of reasons. First, the author argues that money transmission laws are not appropriately tailored to regulate these risky and volatile financial products, which function more as speculative investments than money. The author points to AB 39 (Grayson), also pending in this committee, which adopts portions of the ULC model law and creates a separate licensing regime for these types of products. Second, DFPI has already concluded that the CA MTA does not apply to virtual currencies, and AB 1116 is consistent with that interpretation

7) Other legislation

² See more about the ULC Model law here: <https://www.uniformlaws.org/committees/community-home?communitykey=e104aaa8-c10f-45a7-a34a-0423c2106778>

- a) AB 39 (Grayson), of the 2023-2024 Legislative Session, would license digital financial asset businesses. AB 39 is pending in Assembly Banking and Finance Committee.
- b) AB 2269 (Grayson), of the 2021-2023 Legislative Session, would have licensed and regulated digital financial asset businesses. AB 2269 was vetoed by the Governor.
- c) SB 1498 (Senate Committee on Banking and Financial Institutions), Chapter 452, Statutes of 2022, among other provisions clarified that “money transmission” means selling or issuing payment instruments or stored value to a person located in California and receiving money for transmission from a person located in California.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Luke Reidenbach / B. & F. / (916) 319-3081