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## Select Committee on Community Security

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### HB 2661

**Brief Description:** Licensing and regulating money transmitters and currency exchangers.

**Sponsors:** Representative Hurst; by request of Governor Locke and Attorney General.

#### Brief Summary of 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.
- Provides consumer protection provisions for the customers of covered businesses.
- Creates criminal penalties for certain violations of the act.

**Hearing Date:** 1/29/02

**Staff:** Thamas Osborn (786-7129).

#### Background:

Money transmission— generally involves a relatively informal transaction in which the customer arranges to send money to another person through the services of an intermediary business - i.e., a money transmitter - in return for the payment of a fee. The transmission of the money can occur in any one of a number of ways, including by telephone, wire, facsimile, or computer. In international transactions involving the exchange of one currency for another, it is common for the money transmitter to provide currency exchange services as well.

Historically, the money transmission business in the United States has been by dominated by two large corporations, Western Union and MoneyGram. As of 1996, these two companies accounted for 97 percent of the face value of funds transmitted nationwide. However, they accounted for only 81 percent of the total number of money transmission outlets (approximately 35,000), which means that the remaining 19 percent of the outlet locations

(approximately 8,000) were in the hands of smaller, independent operators. These operations consist of small outlets managed either as private businesses operating their own small networks, or as one-person agencies that receive a customer's money on behalf of another money transmitter.

Money transmission services are commonly used by members of various ethnic groups in order to conduct international money transfers. According to a 1997 study, 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. Such services are also used by those who - for cultural or other reasons - either do not maintain an account with a commercial bank or who simply feel more comfortable doing business with a small, neighborhood business that caters to a certain ethnic community.

At present, money transmission and currency exchange businesses are not subject to systematic regulation either by the state or the federal government. Though these businesses are subject to state and federal regulations pertaining to money laundering, currency transaction reporting, and consumer protection, there is currently no licensing requirement and no explicit regulation of their business practices. The absence of such regulatory oversight has become the subject of public scrutiny following the recent publication of evidence linking certain money transmission businesses with the financing of terrorist acts in this country.

In this state, businesses that provide financial services are generally subject to regulation by the Department of Financial Institutions (the department). The department is the agency responsible for the regulation of banks, savings and loans, credit unions, securities brokers, mortgage brokers, and other financial entities.

## **Summary of Bill:**

### **I. Introduction**

The department is granted broad discretionary 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, consumer protection, 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 and 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. In order to fall under the definition, the transmission must take place with the expectation of compensation or gain. 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. In order to fall under the definition, the exchange transaction must take place with the expectation of compensation or gain.

"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; and
- State licensed insurance companies, title insurance companies, or escrow agents.

#### **IV. Licensing Requirements for Money Services Businesses**

Generally: Money transmitters and currency exchangers must be licensed by the state in order to conduct business, and both 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 department 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 Department of Financial Institutions (the 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 department pursuant to administrative rule.

Investigation by the director: Prior to issuing a license, the director must conduct an investigation of the applicant leading 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 \$50,000 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 required investments are held in trust for customers with outstanding money transmissions and are exempt from attachment by other creditors. The maintenance of these investments by a money transmitter is subject to extensive regulation by the department, 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 \$25,000 or face regulatory action by the department.

## **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 the receipt of a written request from a customer.

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;
- Committing fraud or misrepresentation;
- Creating false or deceptive documents or records; and
- Failing to file reports or records required by law.

### **VIII. Regulatory Powers of the Department**

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 in order 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, violations of criminal law, links to terrorist organizations or terrorist financing, fraud or misrepresentation, insolvency, unsound business practices, etc. 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.

## **IX. Additional Sanctions and Remedies**

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.

Consumer Protection Act: Violations of the regulations pertaining to money services providers constitute an unfair or deceptive act or practice in violation of the Consumer Protection Act. Accordingly, such violations may be subject to the remedies available under the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** October 1, 2002.