

SENATE BILL REPORT

SB 5209

As of February 14, 2013

Title: An act relating to licensing and enforcement provisions applicable to money transmitters.

Brief Description: Addressing licensing and enforcement provisions applicable to money transmitters.

Sponsors: Senators Hobbs, Benton, Nelson, Mullet and Hatfield; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/12/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: The Department of Financial Institutions (DFI) regulates the money transmission and currency exchange businesses, collectively referred to as money services, under the Uniform Money Services Act (Act). The Act states that it is the intent of the Legislature to establish a state system of licensure and regulation to ensure the safe and sound operation of money transmission and currency exchange businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the state's financial system, and to protect the public interest.

Money transmission is 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 or delivery of the money can take place by any means, including wire, facsimile, or electronic transfer.

Currency exchange is 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 exempt from the definition.

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 do not need a license if total business revenues obtained from currency exchange do not exceed 5 percent.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Money Transmitter License Application. An application for a money transmitter license must contain specified information, including:

- a ten-year employment history of the designated responsible individual;
- fingerprints of the responsible individual, upon request by the Director of DFI (Director);
- a list of any criminal convictions sustained by the responsible individual during the preceding ten 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;
- information regarding any bankruptcy or receivership affecting the responsible individual;
- if the applicant is a business entity, specific additional information about the entity; and
- any other information required by DFI, by rule.

Prior to issuing a license, the Director must conduct an investigation of the responsible person for the applicant and find that it is in the best interest of the public to allow the applicant to engage in the money services business. The investigation must include the following:

- 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.

Exemptions. Certain entities are specifically exempt from the Act. The Director may waive the licensing provisions of the Act when the Director determines it necessary to facilitate commerce and protect consumers.

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.

Money Laundering and Governmental Reporting Requirements. A money services licensee must comply with:

- money laundering laws;
- record keeping laws; and
- suspicious transaction reporting requirements.

Financial Requirements. Money transmitters are required to maintain:

- a surety bond, or other acceptable security;
- a portfolio of permissible investments; and
- a tangible net worth, set in rule, of at least \$10,000, but not exceeding \$3 million.

Authority of the Director. The Director may examine and investigate money service provider licensees. The Director may take a wide range of regulatory actions for violations of the Act or rules to implement the Act. The Director may adopt rules to implement the Act. There are criminal penalties for certain violations of the Act.

Background Checks for Financial Professionals. A variety of financial professionals are required by state or federal law to undergo a background check, including fingerprinting. This group includes people who work at banks, credit unions, consumer loan companies, escrow agents, mortgage brokers, and insurance producers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): At the time of application for an initial license and upon license renewal, an applicant must provide identifying information, including fingerprints, to DFI regarding each applicant's officers, directors, and owners.

This does not apply if the applicant or its corporate parents are publicly traded entities.

The officers, directors, and owners are subject to a state and national criminal background check. DFI can only disseminate this background information to criminal justice agencies.

A licensee must provide contact information for all persons that are authorized to provide money services on behalf of the licensee.

The Director is expressly given the authority and administrative discretion to administer and interpret the Act to fulfill the stated intent of the Legislature.

Several definitions are modified and language throughout the Act is conformed to those changed definitions.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is important as it allows money transmitters to get fingerprinted which could be helpful for smaller money transmitters who have a harder time establishing banking relationships. This would allow them to sell themselves to the banks, demonstrating they have good backgrounds. Other states require

this. The substitute bill takes out the Consumer Protection Act language. DFI will continue to work with stakeholders on this issue as this remedy is an important one for consumers.

Persons Testifying: PRO: Deb Bortner, DFI.