

Assembly Bill No. 786

Passed the Assembly September 6, 2013

Chief Clerk of the Assembly

Passed the Senate September 3, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2003, 2010, 2011, 2040, 2082, 2084, 2101, and 2102 of, and to add Sections 2174 and 2175 to, the Financial Code, relating to money transmissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 786, Dickinson. Money transmissions.

Existing law, the Money Transmission Act, provides for the regulation of money transmissions by the Department of Financial Institutions and the Commissioner of Financial Institutions. The Governor's Reorganization Plan No. 2, as of July 1, 2013, abolished the Department of Financial Institutions and transferred its responsibilities to the Department of Business Oversight and the Commissioner of Business Oversight.

Existing law requires a person who engages in the business of money transmission in this state to be licensed and provides that only a corporation or limited liability company may be issued a license. Existing law exempts certain persons or entities from the application of the act, as specified. Existing law authorizes the commissioner, by regulation or order, to exempt from the act any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and not necessary.

This bill would further exempt from the act 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. The bill would authorize the commissioner, by regulation or order, to exempt from all or part of the act any person or transaction or class of persons or transactions based on that finding. The bill would require the commissioner to adopt regulations to carry out and implement this section. The bill would require the commissioner to make these exemptions public on the commissioner's Internet Web site, as specified.

Existing law requires a licensee to maintain tangible shareholders' equity, as defined, in an amount to be determined from time to time by the commissioner, but not less than \$500,000.

This bill would require an applicant to possess, and a licensee to maintain at all times, tangible shareholder's equity of \$250,000 to \$500,000, depending on estimated or actual transaction volume, as determined by the commissioner based on specified factors. The bill would authorize the commissioner to increase that net worth required if the commissioner determines that a higher net worth is necessary based on the aforementioned factors. The bill would require the commissioner to adopt regulations to carry out and implement those factors.

Existing law requires a licensee to at all times own eligible securities, meaning any United States currency eligible security or foreign currency eligible security, having an aggregate market value computed in accordance with United States generally accepted accounting principles, as specified.

This bill would specify that any receivable owed by a bank and resulting from an automated clearinghouse or credit-funded transmission is a United States currency eligible security.

Existing law provides that a licensee shall be deemed to own an eligible security if certain requirements are met. Existing law provides that no licensee shall be deemed not to own an eligible security solely on account of certain facts, provided that, but for that fact, the licensee would be deemed to own the eligible security.

This bill would provide that no licensee shall be deemed not to own an eligible security solely on account of the fact that the licensee holds the eligible security in a custodial capacity as an agent of its customers in a pooled account in the name of the licensee, as determined by the commissioner based on specified factors.

Existing law requires a licensee or its agent to forward all money received for transmission or give instructions committing equivalent money to the person designated by the customer within 10 days after receiving that money, unless otherwise ordered by the customer. In the case of money received for transmission, existing law requires a receipt to be provided by a licensee or its agent to all customers and requires the receipt to include a specified statement in this regard.

This bill would provide an exception to these requirements when the money transmission is for the payment of goods or services.

Existing law provides the commissioner with certain powers for the purposes of enforcing and administering the act.

This bill would authorize the commissioner to prepare written decisions, opinion letters, and other formal written guidance and would require the commissioner to make these documents public on the commissioner's Internet Web site subject to certain limitations. The bill would also authorize the commissioner to offer guidance to a prospective licensee regarding the conditions of licensure and would require the commissioner offering such guidance to provide a prospective applicant with the minimum net worth required.

The people of the State of California do enact as follows:

SECTION 1. Section 2003 of the Financial Code is amended to read:

2003. For purposes of this division, the following definitions shall apply:

(a) "Affiliate," when used with respect to a specified person, means any person controlling, controlled by, or under common control with, that specified person, directly or indirectly through one or more intermediaries. For purposes of subdivisions (q) and (v), a specified person is affiliated with another person if that person controls, is controlled by, or under common control through the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of that specified person.

(b) "Agent" means a person that is not itself licensed as a money transmitter in California and provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person. However, "agent" does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(c) "Applicant" means a person that files an application for a license or for acquisition of control of a licensee under this division.

(d) "Average daily outstanding" means the amount of outstanding money transmission obligations in California at the

end of each day in a given period of time, added together, and divided by the total number of days in that period of time.

(e) “Branch office” means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.

(f) “Business day” means one of the following:

(1) When used with respect to any act to be performed in this state, any day other than Saturday, Sunday, or any other day that is provided for as a holiday in the Government Code.

(2) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day that is a legal holiday under the laws of that jurisdiction.

(g) “Commissioner” means the Commissioner of Business Oversight.

(h) “Control” has the meaning set forth in Section 1250.

(i) “Day” means calendar day.

(j) “In California” or “in this state” means physically located in California, or with, to, or from persons located in California.

(k) “Issue” and “issuer” mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, “issue” and “issuer” mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(l) “Licensee” means a corporation or limited liability company licensed under this division.

(m) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(n) “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(o) “Money transmission” means any of the following:

(1) Selling or issuing payment instruments.

(2) Selling or issuing stored value.

(3) Receiving money for transmission.

(p) “Outstanding,” with respect to payment instruments and stored value, means issued or sold by the licensee in the United

States and not yet paid or refunded by the licensee, or issued or sold on behalf of the licensee in the United States by its agent and reported as sold, but not yet paid or refunded by the licensee. “Outstanding,” with respect to receiving money for transmission means all money or monetary value received in the United States for transmission by the licensee or its agents but not yet paid to the beneficiaries or refunded to the person from whom the money or monetary value was received. All outstanding money transmission of a licensee is and shall remain a liability of the licensee until it is no longer outstanding.

(q) “Payment instrument” means 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 affiliate.

(r) “Person” means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity, provided, however, that “person,” when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.

(s) “Receiving money for transmission” or “money received for transmission” means 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.

(t) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(u) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(v) “Stored value” means 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 affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(w) “Traveler’s check” means an instrument that meets all of the following:

(1) Is designated on its face by the term “traveler’s check” or by any substantially similar term or is commonly known and marketed as a traveler’s check.

(2) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase.

(3) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

SEC. 2. Section 2010 of the Financial Code is amended to read: 2010. This division does not apply to the following:

(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 that is licensed under Article 3 (commencing with Section 1800) of Chapter 20 or that is authorized under federal law to maintain a federal agency or federal branch office in this state; a trust company licensed pursuant to Section 1042 or a national association authorized under federal law to engage in a trust banking business; an association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor; and any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency by a contractor on behalf of the United States or a department, agency, or

instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

(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 such a broker-dealer.

(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 subdivision, 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.

(k) A person listed under subdivision (d) is exempted from all the provisions of this division, except Sections 2062 and 2063.

SEC. 3. Section 2011 of the Financial Code is amended to read:

2011. (a) The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from all or part of this division any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division. The commissioner shall post on the

commissioner's Internet Web site a list of all persons, transactions, or classes of person or transactions exempt pursuant to this section, and the part or parts of this division from which they are exempt.

(b) The commissioner shall adopt regulations to carry out and implement this section.

SEC. 4. Section 2040 of the Financial Code is amended to read:

2040. (a) 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 described in subdivision (c).

(b) 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).

(c) When making a determination pursuant to subdivision (a) or (b), the commissioner shall consider the following factors:

(1) The nature and volume of the projected or established business.

(2) The number of locations at or through which money transmission is or will be conducted.

(3) The amount, nature, quality, and liquidity of its assets.

(4) The amount and nature of its liabilities.

(5) The history of its operations and prospects for earning and retaining income.

(6) The quality of its operations.

(7) The quality of its management.

(8) The nature and quality of its principals.

(9) The nature and quality of the persons in control.

(10) The history of its compliance with applicable state and federal law.

(11) Any other factor the commissioner considers relevant.

(d) The commissioner at any time may require a licensee to write down any asset held by it 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.

(e) 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 percent of the licensee's tangible shareholders' equity without the advanced written approval of the commissioner. Whenever such amount equals or exceeds 20 percent 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.

(f) The commissioner shall adopt regulations to carry out and implement the factors described in subdivision (c).

SEC. 5. Section 2082 of the Financial Code is amended to read:

2082. (a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) For the purposes of this division, the following are United States currency eligible securities:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association or insured credit union.

(3) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States.

(4) 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.

(5) Any bankers acceptance that is eligible for discount by a federal reserve bank.

(6) Any commercial paper that is assigned an eligible rating by an eligible rating securities service.

(7) Any bond, note, or other obligation that is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a 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. 270.2a-7).

For purposes of this paragraph and paragraph (9), “investment company,” “management company,” and “open-end” have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4 and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities that comply with valuation requirements of this division.

(10) Any account due to any licensee from any agent in the United States 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.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

(12) Any receivable owed by a bank and resulting from an automated clearinghouse or credit-funded transmission.

(c) “Foreign currency eligible security” means any of the following that is denominated in a foreign currency:

(1) Cash.

(2) Any deposit in an office of a bank acceptable to the commissioner that is located in a foreign country.

(3) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 2086.

(d) For the purposes of this division, “value” means the following:

(1) When used with respect to an eligible security owned by a licensee of the type described in paragraph (10) of subdivision (b), net carrying value as determined in conformity with United States generally accepted accounting principles. However, in computing the value of the account, any amount that consists of money that has not been remitted to the licensee or refunded within 45 business days of receipt by the agent shall be excluded from the value of the account and shall be excluded from the calculation of eligible securities.

(2) Market value when used with respect to any other eligible security owned by a licensee.

SEC. 6. Section 2084 of the Financial Code is amended to read:

2084. (a) A licensee shall be deemed to own an eligible security only if the following apply:

(1) The licensee owns the eligible security solely and exclusively in its own right, both of record and beneficially.

(2) The eligible security is not subject to any pledge, lien, or security interest.

(3) The licensee can freely negotiate, assign, or otherwise transfer the eligible security.

(b) Notwithstanding subdivision (a), no licensee shall be deemed not to own an eligible security solely on account of any of the following facts, provided that, but for that fact, the licensee would be deemed to own the eligible security under the provisions of subdivision (a):

(1) The fact that the eligible security is owned of record by a documented nominee of the licensee or by a securities depository.

(2) The fact that the licensee has pledged the eligible security with the United States or any state of the United States to secure payment by the licensee of transmission money.

(3) The fact that the licensee holds the eligible security in a custodial capacity as an agent of its customers in a pooled account titled in the name of the licensee for the benefit of its customers.

(c) The commissioner shall make a determination of the application of paragraph (3) of subdivision (b) based on the following:

(1) The amount, nature, quality, and liquidity of the licensee's assets.

(2) The amount and nature of the licensee's liabilities.

(3) The history of the licensee's compliance with applicable state and federal law.

SEC. 7. Section 2101 of the Financial Code is amended to read:

2101. Every licensee or its agent shall forward all money received for transmission or give instructions committing equivalent money to the person designated by the customer. Unless the transmission is for the payment of goods or services or unless otherwise ordered by his or her customer, this requirement shall be satisfied within 10 days after receiving that money.

SEC. 8. Section 2102 of the Financial Code is amended to read:

2102. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date of receipt.

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the money from the customer.

(3) The customer instructs the licensee to transmit the money at a time beyond 10 days. If the customer gives instructions as to when the money shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(4) Refund would violate law.

(b) In the case of money received for transmission, a receipt shall be provided by a licensee or its agent to all customers which shall be made available to the customer in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English. Except when money is received for transmission for the payment of goods or services, the receipt shall either include or have attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that branch office if other than English in a size equal to at least 10 point bold type, as follows:

RIGHT TO REFUND

"You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to _____ (name of licensee) at _____ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000 and attorney's fees pursuant to Section 2102 of the California Financial Code.”

(c) A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:

(1) Any and all money received for transmission, plus any fees and charges paid by the customer.

(2) A penalty in an amount not to exceed one thousand dollars (\$1,000). The court shall award the prevailing party costs and attorney's fees.

SEC. 9. Section 2174 is added to the Financial Code, to read:

2174. (a) The commissioner may prepare written decisions, opinion letters, and other formal written guidance to be issued to persons seeking clarification regarding the requirements of this division.

(b) The commissioner shall make public on the commissioner's Internet Web site all written decisions, opinion letters, and other formal written guidance issued to persons seeking clarification regarding the requirements of this division. The commissioner may, at his or her discretion or upon request by an applicant or licensee, redact proprietary or other confidential information regarding an applicant or licensee from any decision, letter, or other written guidance issued in connection with an applicant or licensee.

SEC. 10. Section 2175 is added to the Financial Code, to read:

2175. The commissioner may offer guidance to any prospective applicant for a license under this division, regarding the conditions of licensure that may be applied to that person. The commissioner shall inform any applicant that requests that guidance of the minimum net worth that will be required of that applicant and the

factors used to make that determination as described in Section 2040.

Approved _____, 2013

Governor