

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY MAY 5, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2209

Introduced by Assembly Member Dickinson

February 20, 2014

An act to amend Sections 2001, 2003, 2010, 2031, 2032, 2036, 2038, 2039, 2043, 2082, 2088, 2102, 2103, 2105, 2124, and 2175 of, and to add Section 2176 to, the Financial Code, relating to money transmission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2209, as amended, Dickinson. Money Transmission Act.

Existing law, the Money Transmission Act, provides for the regulation of money transmissions and, unless an exemption applies, requires the licensure by the Commissioner of Business Oversight of persons, including corporations and limited liability companies, to engage in this activity. Existing law declares the need to regulate money transmission businesses in the state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of California. Under existing law, a ~~licensee~~ *licensee* under the act is required to file various reports with the commissioner with specified information, including the total volume of activities, number of transactions conducted and outstanding money transmissions in California and the United States in a given calendar year quarter, as specified. ~~It is~~ *Existing law makes it* a felony to make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act,

or to engage in an activity for which a license is required without being licensed or exempt from licensure.

~~This bill would revise the definition of money transmission for purposes of the act, by deleting the component of the definition involving receipt of money for transmission and replacing it with a third party's acceptance of currency, funds, or other value from a payor and delivery of the currency, funds, or other value to a payee. The bill would exclude from this definition transactions in which the recipient of the currency, funds, or other value is an agent of the payee, as specified: *exempt from the requirements of the act a transaction in which the recipient of the money, or other monetary value is an agent of the payee, and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee.* The bill would revise and reorganize various provisions of the act relating to, among other things, the definition of other relevant terms under the act, and the required contents of license applications and customer receipts. The bill would require that the report described above also include, *if feasible* whether an outstanding money transmission was conducted via mobile ~~or other~~ ~~electronic~~ application *or Internet Web site*. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~This bill would include legislative declarations relating to the expansion of money transmission services to include the use of mobile applications, alternative point of sale systems, and other consumer payment systems. The bill would authorize the commissioner to exercise any power set forth in the act with respect to a money transmission business, if necessary for the general welfare of the public, regardless of the licensure status of the money transmission business. The bill would revise provisions relating to the commissioner's authority to provide guidance to prospective applicants for a license to operate money transmission business.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 2001 of the Financial Code is amended
2 to read:

3 2001. The Legislature finds and declares all of the following:

4 (a) Money transmission businesses conduct a significant amount
5 of business in this state and technological advances are occurring
6 in the provision of money transmission services, which have
7 expanded money transmission to include the use of mobile
8 applications, alternative point of sale systems, and other consumer
9 payment systems.

10 (b) Persons who use money transmission businesses in this state
11 use those businesses for, among other purposes, paying for the
12 necessities of life and transmitting money to family members.

13 (c) The failure of money transmission businesses to fulfill their
14 obligations would cause loss to consumers, disrupt the payments
15 mechanism in this state, undermine public confidence in financial
16 institutions doing business in this state, and adversely affect the
17 health, safety, and general welfare of persons in this state.

18 (d) To protect the interests of consumers of money transmission
19 businesses in this state, to maintain public confidence in financial
20 institutions doing business in this state, and to preserve the health,
21 safety, and general welfare of the people of this state, it is necessary
22 to regulate money transmission businesses in this state.

23 SEC. 2. Section 2003 of the Financial Code is amended to read:

24 2003. For purposes of this division, the following definitions
25 shall apply:

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

35 (b) "Agent" means a person that is not itself licensed as a money
36 transmitter in California and provides money transmission in
37 California on behalf of the licensee, provided that the licensee
38 becomes liable for the money transmission from the time money

- 1 or monetary value is received by that person. However, “agent”
 2 does not include any officer or employee of the licensee when
 3 acting as such at an office of a licensee.
- 4 (c) “Applicant” means a person that files an application for a
 5 license or for acquisition of control of a licensee under this division.
- 6 (d) “Average daily outstanding” means the amount of
 7 outstanding money transmission obligations in California at the
 8 end of each day in a given period of time, added together, and
 9 divided by the total number of days in that period of time.
- 10 (e) “Branch office” means any office in this state of a licensee
 11 or agent at which the licensee receives money or monetary value
 12 to provide money transmission, either directly or through an agent.
- 13 (f) “Business day” means one of the following:
- 14 (1) When used with respect to any act to be performed in this
 15 state, any day other than Saturday, Sunday, or any other day that
 16 is provided for as a holiday in the Government Code.
- 17 (2) When used with respect to any act to be performed in any
 18 jurisdiction other than this state, any day other than a day that is
 19 a legal holiday under the laws of that jurisdiction.
- 20 (g) “Commissioner” means the Commissioner of Business
 21 Oversight.
- 22 (h) “Control” has the meaning set forth in Section 1250.
- 23 (i) “Day” means calendar day.
- 24 (j) “*E-commerce*” means the transaction of goods or services
 25 initiated via mobile application or an Internet Web site.
- 26 (~~j~~)
- 27 (k) “In California” or “in this state” means physically located
 28 in California, or with, to, or from persons located in California.
- 29 (~~k~~)
- 30 (l) “Issue” and “issuer” mean, with regard to a payment
 31 instrument, the entity that is the maker or drawer of the instrument
 32 in accordance with the California Commercial Code and is liable
 33 for payment. With regard to stored value, “issue” and “issuer”
 34 mean the entity that is liable to the holder of stored value and has
 35 undertaken or is obligated to pay the stored value. Only a licensee
 36 may issue stored value or payment instruments.
- 37 (~~l~~)
- 38 (m) “Licensee” means a corporation or limited liability company
 39 licensed under this division.
- 40 (~~m~~)

1 (n) “Material litigation” means litigation that according to United
2 States generally accepted accounting principles is significant to
3 an applicant’s or a licensee’s financial health and would be required
4 to be disclosed in the applicant’s or licensee’s annual audited
5 financial statements, report to shareholders, or similar records.

6 ~~(n)~~

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

9 ~~(o)~~

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

15 ~~(p)~~

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

17 (1) Selling or issuing payment instruments.

18 (2) Selling or issuing stored value.

19 ~~(3) (A) A third party’s acceptance of currency, funds, or other~~
20 ~~value from a payor and delivery of the currency, funds, or other~~
21 ~~value to the payee. “Money transmission” does not include a~~
22 ~~transaction in which the recipient of the currency, funds, or other~~
23 ~~value is an agent of the payee, and delivery of the funds to the~~
24 ~~agent satisfies the payor’s obligation to the payee.~~

25 ~~(B) For purposes of this paragraph, “agent” has the same~~
26 ~~meaning as that term is defined in Section 2295 of the Civil Code.~~

27 ~~(C) For purposes of this paragraph, “payee” means the intended~~
28 ~~recipient of currency, funds, or other value from a payor.~~

29 ~~(3) Receiving money for transmission.~~

30 ~~(q)~~

31 (r) “Outstanding,” with respect to payment instruments and
32 stored value, means issued or sold by the licensee in the United
33 States and not yet paid or refunded by the licensee, or issued or
34 sold on behalf of the licensee in the United States by its agent and
35 reported as sold, but not yet paid or refunded by the licensee.
36 “Outstanding,” with respect to receiving money for transmission
37 means all money or monetary value received in the United States
38 for transmission by the licensee or its agents but not yet paid to
39 the beneficiaries or refunded to the person from whom the money
40 or monetary value was received. All outstanding money

1 transmission of a licensee is and shall remain a liability of the
2 licensee until it is no longer outstanding.

3 ~~(t)~~

4 (s) "Payment instrument" means a check, draft, money order,
5 traveler's check, or other instrument for the transmission or
6 payment of money or monetary value, whether or not negotiable.
7 The term does not include a credit card voucher, letter of credit,
8 or any instrument that is redeemable by the issuer for goods or
9 services provided by the issuer or its affiliate.

10 ~~(s)~~

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

19 ~~(t)~~

20 (u) "Receiving money for transmission" or "money received
21 for transmission" means receiving money or monetary value in
22 the United States for transmission within or outside the United
23 States by electronic or other means. The term does not include sale
24 or issuance of payment instruments and stored value.

25 ~~(t)~~

26 (v) "Record" means information that is inscribed on a tangible
27 medium or that is stored in an electronic or other medium and is
28 retrievable in perceivable form.

29 ~~(v)~~

30 (w) "State" means a state of the United States, the District of
31 Columbia, Puerto Rico, the United States Virgin Islands, or any
32 territory or insular possession subject to the jurisdiction of the
33 United States.

34 ~~(w)~~

35 (x) "Stored value" means monetary value representing a claim
36 against the issuer that is stored on an electronic or digital medium
37 and evidenced by an electronic or digital record, and that is
38 intended and accepted for use as a means of redemption for money
39 or monetary value or payment for goods or services. The term does
40 not include a credit card voucher, letter of credit, or any stored

1 value that is only redeemable by the issuer for goods or services
2 provided by the issuer or its affiliate, except to the extent required
3 by applicable law to be redeemable in cash for its cash value.

4 ~~(x)~~

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

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

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

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

14 SEC. 3. Section 2010 of the Financial Code is amended to read:

15 2010. This division does not apply to the following:

16 (a) The United States or a department, agency, or instrumentality
17 thereof, including any federal reserve bank and any federal home
18 loan bank.

19 (b) Money transmission by the United States Postal Service or
20 by a contractor on behalf of the United States Postal Service.

21 (c) A state, county, city, or any other governmental agency or
22 governmental subdivision of a state.

23 (d) A commercial bank or industrial bank, the deposits of which
24 are insured by the Federal Deposit Insurance Corporation or its
25 successor, or any foreign (other nation) bank that is licensed under
26 Chapter 20 (commencing with Section 1750) or that is authorized
27 under federal law to maintain a federal agency or federal branch
28 office in this state; a trust company licensed pursuant to Section
29 1042 or a national association authorized under federal law to
30 engage in a trust banking business; an association or federal
31 association, as defined in Section 5102, the deposits of which are
32 insured by the Federal Deposit Insurance Corporation or its
33 successor; and any federally or state chartered credit union, with
34 an office in California, the member accounts of which are insured
35 or guaranteed as provided in Section 14858.

36 (e) Electronic funds transfer of governmental benefits for a
37 federal, state, county, or local governmental agency by a contractor
38 on behalf of the United States or a department, agency, or
39 instrumentality thereof, or a state or governmental subdivision,
40 agency, or instrumentality thereof.

1 (f) A board of trade designated as a contract market under the
2 federal Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or a
3 person that, in the ordinary course of business, provides clearance
4 and settlement services for a board of trade to the extent of its
5 operation as or for such a board.

6 (g) A person that provides clearance or settlement services
7 pursuant to a registration as a clearing agency or an exemption
8 from registration granted under the federal securities laws to the
9 extent of its operation as such a provider.

10 (h) An operator of a payment system to the extent that it provides
11 processing, clearing, or settlement services, between or among
12 persons excluded by this section, in connection with wire transfers,
13 credit card transactions, debit card transactions, stored value
14 transactions, automated clearing house transfers, or similar funds
15 transfers, to the extent of its operation as such a provider.

16 (i) A person registered as a securities broker-dealer under federal
17 or state securities laws to the extent of its operation as such a
18 broker-dealer.

19 (j) A person that delivers wages or salaries on behalf of
20 employers to employees or facilitates the payment of payroll taxes
21 to state and federal agencies, makes payments relating to employee
22 benefit plans, makes distribution of other authorized deductions
23 from employees' wages or salaries, or transmits other funds on
24 behalf of an employer in connection with transactions related to
25 employees. Notwithstanding this subdivision, a person described
26 herein that offers money transmission services or provides stored
27 value cards directly to individual customers shall comply with this
28 division to the extent of that activity.

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

31 *(l) A transaction in which the recipient of the money, or other*
32 *monetary value is an agent of the payee, and delivery of the money*
33 *or other monetary value to the agent satisfies the payor's obligation*
34 *to the payee.*

35 *(1) For purposes of this subdivision, "agent" has the same*
36 *meaning as that term is defined in Section 2295 of the Civil Code.*

37 *(2) For purposes of this subdivision, "payee" means the*
38 *provider of goods or services, who is owed payment of money or*
39 *other monetary value from the payor for the goods or services.*

1 (3) For purposes of this subdivision, “payor” means the
2 recipient of goods or services, who owes payment of money or
3 monetary value to the payee for the goods or services.

4 SEC. 4. Section 2031 of the Financial Code is amended to read:

5 2031. Only the following persons may apply for or be issued
6 a license:

7 (a) A corporation or limited liability company organized under
8 the laws of this state.

9 (b) A corporation, other than a corporation organized under the
10 laws of this state, that is qualified to transact intrastate business in
11 this state under Chapter 21 (commencing with Section 2100) of
12 Division 1 of Title 1 of the Corporations Code.

13 (c) A limited liability company, other than a limited liability
14 company organized under the laws of this state, that is qualified
15 to transact intrastate business in this state under Article 8
16 (commencing with Section 17708.01) of the Corporations Code,
17 except a limited liability company that is organized outside the
18 United States shall not be issued a license.

19 SEC. 5. Section 2032 of the Financial Code is amended to read:

20 2032. (a) An applicant for licensure under this division shall
21 pay to the commissioner a nonrefundable fee of five thousand
22 dollars (\$5,000).

23 (b) An applicant for a license under this division shall do so in
24 a form and in a medium prescribed by the commissioner by order
25 or regulation. The application shall state or contain all of the
26 following:

27 (1) The legal name and residential business address of the
28 applicant and any fictitious or trade name used by the applicant in
29 conducting its business.

30 (2) A list of any criminal convictions of the applicant and any
31 material litigation in which the applicant has been involved in the
32 10-year period next preceding the submission of the application.

33 (3) A description of any money transmission services previously
34 provided by the applicant and the money transmission services
35 that the applicant seeks to provide in this state.

36 (4) A list of the applicant’s proposed agents and the locations
37 in this state where the applicant and its agents propose to engage
38 in money transmission.

39 (5) A list of other states in which the applicant is licensed to
40 engage in money transmission and any license revocations,

1 suspensions, or other disciplinary action taken against the applicant
2 in another state.

3 (6) Information concerning any bankruptcy or receivership
4 proceedings affecting the licensee.

5 (7) A sample form of payment instrument or instrument upon
6 which stored value is recorded, if applicable.

7 (8) A sample form of receipt for transactions that involve money
8 received for transmission.

9 (9) The name and address of any bank through which the
10 applicant's payment instruments and stored value will be paid.

11 (10) A description of the source of money and credit to be used
12 by the applicant to provide money transmission services.

13 (11) The date of the applicant's incorporation or formation and
14 the state or country of incorporation or formation.

15 (12) A certificate of good standing from the state or country in
16 which the applicant is incorporated or formed.

17 (13) A description of the structure or organization of the
18 applicant, including any parent or subsidiary of the applicant, and
19 whether any parent or subsidiary is publicly traded.

20 (14) The legal name, any fictitious or trade name, all business
21 and residential addresses, and the employment, in the 10-year
22 period next preceding the submission of the application, of each
23 executive officer, manager, director, or person that has control, of
24 the applicant, *and the educational background for each person.*

25 (15) A list of any criminal convictions and material litigation
26 in which any executive officer, manager, director, or person in
27 control, of the applicant has been involved in the 10-year period
28 next preceding the submission of the application.

29 (16) A copy of the applicant's audited financial statements for
30 the most recent fiscal year and, if available, for the two-year period
31 next preceding the submission of the application.

32 (17) A copy of the applicant's unconsolidated financial
33 statements for the current fiscal year, whether audited or not, and,
34 if available, for the two-year period next preceding the submission
35 of the application.

36 (18) If the applicant is publicly traded, a copy of the most recent
37 report filed with the United States Securities and Exchange
38 Commission under Section 13 of the federal Securities Exchange
39 Act of 1934 (15 U.S.C. Sec. 78m).

40 (19) If the applicant is a wholly owned subsidiary of:

1 (A) A corporation publicly traded in the United States, a copy
2 of audited financial statements for the parent corporation for the
3 most recent fiscal year or a copy of the parent corporation's most
4 recent report filed under Section 13 of the federal Securities
5 Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for
6 the two-year period next preceding the submission of the
7 application.

8 (B) A corporation publicly traded outside the United States, a
9 copy of similar documentation filed with the regulator of the parent
10 corporation's domicile outside the United States.

11 (20) The name and address of the applicant's registered agent
12 in this state.

13 (21) The applicant's plan for engaging in money transmission
14 business, including without limitation three years of pro forma
15 financial statements.

16 (22) Any other information the commissioner requires with
17 respect to the applicant.

18 (c) The commissioner may waive any of the information
19 required under subdivision (b) or permit an applicant to submit
20 other information instead of the required information.

21 SEC. 6. Section 2036 of the Financial Code is amended to read:

22 2036. The commissioner may impose on any authorization,
23 approval, license, or order issued pursuant to this division any
24 conditions that are necessary for the safety and soundness of the
25 licensee, or *reasonable or necessary* to maintain or enhance
26 consumer protection.

27 SEC. 7. Section 2038 of the Financial Code is amended to read:

28 2038. Fees shall be paid to, and collected by, the commissioner,
29 as follows:

30 (a) The fee for filing an application for a license is five thousand
31 dollars (\$5,000), as provided in subdivision (a) of Section 2032.

32 (b) The fee for filing an application for approval to acquire
33 control of a licensee is three thousand five hundred dollars
34 (\$3,500).

35 (c) A licensee shall pay annually on or before July 1, a licensee
36 fee of two thousand five hundred dollars (\$2,500).

37 (d) A licensee shall pay annually on or before July 1, one
38 hundred twenty-five dollars (\$125) for each licensee branch office
39 in this state.

1 (e) A licensee shall pay annually on or before July 1, twenty-five
2 dollars (\$25) for each agent branch office in this state.

3 (f) Whenever the commissioner examines a licensee or any
4 agent of a licensee, the licensee shall pay, within 10 days after
5 receipt of a statement from the commissioner, a fee of seventy-five
6 dollars (\$75) per hour for each examiner engaged in the
7 examination plus, if it is necessary for any examiner engaged in
8 the examination to travel outside this state, the travel expenses of
9 the examiner.

10 (g) Whenever the commissioner examines an applicant, the
11 applicant shall pay, within 10 days after receipt of a statement
12 from the commissioner, a fee of seventy-five dollars (\$75) per
13 hour for each examiner engaged in the examination plus, if it is
14 necessary for any examiner engaged in the examination to travel
15 outside this state, the travel expenses of the examiner.

16 (h) Each fee for filing an application shall be paid at the time
17 the application is filed with the commissioner. No fee for filing
18 an application shall be refundable, regardless of whether the
19 application is approved, denied, or withdrawn.

20 SEC. 8. Section 2039 of the Financial Code is amended to read:

21 2039. (a) The commissioner may by order or regulation grant
22 exemptions from this section in cases where the commissioner
23 finds that the requirements of this section are not necessary or may
24 be duplicative.

25 (b) In addition to any other reports as may be required pursuant
26 to Sections 453, 454, and 455, each licensee shall, within 90 days
27 after the end of each fiscal year, or within any extended time as
28 the commissioner may prescribe, file with the commissioner an
29 audit report for the fiscal year that shall comply with all of the
30 following provisions:

31 (1) The audit report shall contain audited financial statements
32 of the licensee for or as of the end of the fiscal year prepared in
33 accordance with United States generally accepted accounting
34 principles and any other information as the commissioner may
35 require.

36 (2) The audit report shall be based upon an audit of the licensee
37 conducted in accordance with United States generally accepted
38 auditing standards and any other requirements as the commissioner
39 may prescribe.

1 (3) The audit report shall be prepared by an independent certified
2 public accountant or independent public accountant who is not
3 unsatisfactory to the commissioner.

4 (4) The audit report shall include or be accompanied by a
5 certificate of opinion of the independent certified public accountant
6 or independent public accountant that is satisfactory in form and
7 content to the commissioner. If the certificate or opinion is
8 qualified, the commissioner may order the licensee to take any
9 action as the commissioner may find necessary to enable the
10 independent or certified public accountant or independent public
11 accountant to remove the qualification.

12 (c) Each licensee shall, not more than 45 days after the end of
13 each calendar year quarter, or within a longer period as the
14 commissioner may by regulation or order specify, file with the
15 commissioner a report containing all of the following:

16 (1) Financial statements, including balance sheet, income
17 statement, statement of changes in shareholders' equity, and
18 statement of cashflows, for, or as of the end of, that calendar year
19 quarter, verified by two of the licensee's principal officers. The
20 verification shall state that each of the officers making the
21 verification has a personal knowledge of the matters in the report
22 and that each of them believes that each statement on the report is
23 true.

24 (2) For issuers and sellers of payment instruments and stored
25 value, a schedule of eligible securities owned by the licensee
26 pursuant to Section 2081.

27 (3) Other information as the commissioner may by regulation
28 or order require.

29 (d) Each licensee, not more than 45 days after the end of each
30 calendar year quarter, shall file with the commissioner a report
31 containing all of the following:

32 (1) The current address of each branch office of the licensee in
33 this state. If a branch office was opened or closed during the
34 calendar year quarter, the date it was opened or closed. If a branch
35 office was relocated during the calendar year quarter, the addresses
36 of the old and new locations and the date of relocation.

37 (2) The name of each person who acted as an agent in this state
38 of the licensee during the calendar year quarter and the address
39 for each agent branch office. If a person was appointed or
40 terminated as an agent during the calendar year quarter, the date

1 of appointment or termination. If an agent branch office relocated,
2 the addresses for the old and new locations and the date of
3 relocation.

4 (3) The total volume of activities, number of transactions
5 conducted, and outstanding money transmission obligations in
6 California under this division and in the United States in the
7 calendar year quarter categorized by type of money transmission,
8 and, *if feasible* whether the transmission was conducted via mobile
9 *application* or ~~other electronic application~~ *Internet Web site*. For
10 money received for transmission, a report of the average daily
11 outstanding transmission liabilities in California, and, if applicable,
12 a schedule of each foreign country to which money was sent, along
13 with the total amount of money sent to that foreign country in that
14 calendar year quarter. For payment instruments and stored value,
15 a report of the average daily outstanding payment instruments and
16 stored value liabilities in California in that calendar year quarter.

17 (4) Other information as the commissioner may by regulation
18 or order require.

19 (e) Each licensee shall file with the commissioner other reports
20 as and when the commissioner may by regulation or order require.

21 SEC. 9. Section 2043 of the Financial Code is amended to read:

22 2043. (a) On or before April 1, 2013, and annually thereafter,
23 each licensee shall provide its agents under contract with training
24 materials on recognizing elder or dependent adult financial abuse,
25 and how to appropriately respond if the agent suspects that he or
26 she is being asked to engage in money transmission for a fraudulent
27 transaction involving an elder or dependent adult.

28 (b) To ensure that agents that are newly appointed by licensees
29 pursuant to Section 2060 receive the training materials described
30 in subdivision (a) in a timely manner, each licensee shall provide
31 those materials to any newly appointed agent no later than one
32 month following the appointment of that agent.

33 (c) This section shall not apply to licensees that are engaged
34 solely in selling or issuing stored value pursuant to paragraph (2)
35 of subdivision ~~(p)~~ (q) of Section 2003. Licensees that engage in
36 money transmission activities pursuant to paragraph (1) or (3) of
37 that subdivision, shall be subject to this section only with respect
38 to their agents under contract for activities described in those
39 paragraphs. Additionally, this section shall not apply to licensees

1 who exclusively offer their services via an Internet Web site, ~~or~~
2 mobile ~~electronic~~ application, *or both*.

3 *SEC. 10. Section 2082 of the Financial Code is amended to*
4 *read:*

5 2082. (a) “Eligible security” means any United States currency
6 eligible security or foreign currency eligible security.

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

9 (1) Cash.

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

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

14 (4) Any bond, note, or other obligation that is issued or
15 guaranteed by any state of the United States or by any
16 governmental agency of or within any state of the United States
17 and that is assigned an eligible rating by an eligible securities rating
18 service.

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

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

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

25 (8) Any share of an investment company that is an open-end
26 management company, that is registered under the Investment
27 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), that holds
28 itself out to investors as a money market fund, and that operates
29 in accordance with all provisions of the Investment Company Act
30 of 1940, and the regulations of the Securities and Exchange
31 Commission applicable to money market funds, including Section
32 270.2a-7 of the regulations of the Securities and Exchange
33 Commission (17 C.F.R. 270.2a-7).

34 For purposes of this paragraph and paragraph (9), “investment
35 company,” “management company,” and “open-end” have the
36 meanings set forth in Sections 3, 4, and 5, respectively, of the
37 Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4 and
38 80a-5, respectively).

39 (9) Any share of an investment company that is an open-end
40 management company, that is registered under the Investment

1 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that
2 invests exclusively in securities that constitute eligible securities
3 that comply with valuation requirements of this division.

4 (10) Any account due to any licensee from any agent in the
5 United States on account of the receipt of money on behalf of the
6 licensee for money transmission by the agent, if the account is
7 current and not past due or otherwise doubtful of collection.

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

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

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

15 (1) Cash.

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

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

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

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

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

34 ~~SEC. 10.~~

35 *SEC. 11.* Section 2088 of the Financial Code is amended to
36 read:

37 2088. (a) The commissioner may by regulation or order declare
38 a credit rating agency to be an eligible securities rating service if
39 the commissioner finds the following with respect to the securities
40 rating service:

1 (1) It has been continuously engaged in the business of rating
2 securities for a period of not less than three years.

3 (2) It is competent to rate securities and is nationally recognized
4 for rating securities in a competent manner.

5 (3) It publishes its ratings of securities on a nationwide basis.

6 (b) With respect to this division “eligible securities rating
7 service” means any credit rating agency that the commissioner by
8 regulation or order declared to be an eligible securities ratings
9 service.

10 ~~SEC. 11.~~

11 *SEC. 12.* Section 2102 of the Financial Code is amended to
12 read:

13 2102. (a) Every licensee or its agent shall refund to the
14 customer within 10 days of receipt of the customer’s written request
15 for a refund any and all money received for transmission unless
16 any of the following occurs:

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

19 (2) Instructions have been given committing an equivalent
20 amount of money to the person designated by the customer within
21 10 days of the date of the receipt of the money from the customer.

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

28 (4) The refund would violate law.

29 (b) If a customer’s instructions as to when the money shall be
30 forwarded or transmitted are not complied with and the money has
31 not yet been forwarded or transmitted, the customer has a right to
32 a refund of his or her money. If a customer does not receive his or
33 her refund, a cause of action under this section may be brought in
34 small claims court if it does not exceed the jurisdiction of that
35 court, or in any other appropriate court. The customer shall be
36 entitled to recover each of the following:

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

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

4 ~~SEC. 12.~~

5 *SEC. 13.* Section 2103 of the Financial Code is amended to
6 read:

7 2103. (a) In the case of money received for transmission, the
8 licensee or its agent shall give the sender or customer a receipt at
9 the time of the transaction.

10 (1) The receipt shall contain the following information, as
11 applicable:

12 (A) The name of the sender.

13 (B) The name of the designated recipient.

14 (C) The date of the transaction, which is the day the customer
15 funds the money transmission.

16 (D) The name of the licensee.

17 (E) The amount to be transferred to the designated recipient, in
18 the currency in which the money transmission is funded, using the
19 term “Transfer Amount” or a substantially similar term.

20 (F) Any fees and taxes imposed on the money transmission by
21 the licensee or its agent which are payable or have been paid by
22 the sender, in the currency in which the money transmission is
23 funded, using the terms “transfer fees” for fees and “transfer taxes”
24 for taxes, or substantially similar terms.

25 (G) The total amount of the transaction, which is the sum of
26 subparagraphs (E) and (F), in the currency in which the money
27 transmission is funded, using the term “total” or a substantially
28 similar term.

29 (H) The exchange rate, if any, used by the licensee or its agent
30 for the money transmission, rounded consistently for each currency
31 to no fewer than two decimal places and no more than four decimal
32 places, using the term “exchange rate” or a substantially similar
33 term.

34 (I) For all transmissions, other than transmissions related to
35 e-commerce transactions, the amount that will be received by the
36 designated recipient, in the currency in which the funds will be
37 received, using the term “total to recipient” or a substantially
38 similar term. For transmissions related to e-commerce transactions,
39 the amount that will be received by the designated recipient before
40 ~~any fees and fees, taxes imposed on the money transmission by~~

1 ~~the licensee or its agent and, or other amounts~~ payable by the
2 designated recipient are deducted, using the term “total to recipient”
3 or a substantially similar term. These ~~fees and fees, taxes, or other~~
4 ~~amounts~~ shall be disclosed to the designated recipient. The
5 disclosure of ~~fees and fees, taxes, or other amounts~~ payable by
6 the designated recipient, which need not be disclosed to the sender,
7 shall be disclosed as part of a separate written agreement between
8 the licensee and the designated recipient.

9 (2) (A) In addition to the disclosures set forth in paragraph (1),
10 the receipt shall either include or have attached a conspicuous
11 statement as follows:

12

13

14 “RIGHT TO REFUND

15

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

22

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

26

27 If you want a refund, you must mail or deliver your written request to _____
28 (name of licensee) at _____ (mailing address of licensee). If you do not receive
29 your refund, you may be entitled to your money back plus a penalty of up to
30 \$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial
31 Code.”

32

33

34 (B) The right to refund statement set forth in subparagraph (A)
35 is not required to be included on receipts involving transactions
36 where the sender is a commercial entity, transactions that involve
37 entities of a type listed in subdivisions (a), (b), and (c) of Section
38 2010, or e-commerce transactions where the customer sends a
39 payment for goods or services.

1 (3) The receipt required by this section shall be made in English
2 and in the language principally used by that licensee or that agent
3 to advertise, solicit, or negotiate, either orally or in writing, at that
4 branch office, if other than English. For transactions that do not
5 occur in a branch office, the receipt shall be made in English and
6 in the language principally used by that licensee or that agent to
7 advertise, solicit, or negotiate money transmission, either orally
8 or in writing.

9 (4) The receipt required by this subdivision may be provided
10 electronically for transactions that are initiated electronically or
11 in which a customer agrees to receive an electronic receipt.

12 (5) Disclosures in the receipt required by this subdivision shall
13 be in a minimum 8-point font, except for receipts provided via
14 mobile phone or text message.

15 (b) If window and exterior signs concerning the rates of
16 exchange for money received for transmission are used, they shall
17 clearly state in English and in the same language principally used
18 by the licensee or any agent of the licensee to advertise, solicit, or
19 negotiate, either orally or in writing, at that branch office if other
20 than English, the rate of exchange for exchanging the currency of
21 the United States for foreign currency. If an interior sign or any
22 advertising is used that quotes exchange rates, it shall, in addition
23 to clearly stating the rates of exchange for exchanging the currency
24 of the United States for foreign currency, also state all commissions
25 and fees charged on all such transactions.

26 (c) At each branch office, there shall be disclosed the exchange
27 rates, fees, and commissions charged in English and in the same
28 language principally used by the licensee or any agent of the
29 licensee to advertise, solicit, or negotiate, either orally or in writing,
30 with respect to money received for transmission at that branch
31 office. At each branch office, there shall be signage clearly
32 identifying the name of the licensee as well as any trade names
33 used by the licensee at that branch office. In the event that a
34 licensee or agent conducts money transmission activity via an
35 Internet Web site or mobile application that is not in a branch
36 office, the commissioner may authorize an alternative disclosure
37 meeting the requirements of this section. Any Internet Web site
38 through which a licensee conducts money transmission shall clearly
39 identify the name of the licensee as well as any trade names used
40 by the licensee on the Internet Web site.

1 (d) If the customer does not specify at the time the money is
2 presented to the licensee or its agent the country to which the
3 money is to be transmitted, the rate of exchange for the transaction
4 is not required to be set forth on the receipt. If the customer does
5 specify at the time the money is presented to the licensee or its
6 agent the country to which the money is to be transmitted but the
7 specified country's laws require the rate of exchange for the
8 transaction to be determined at the time the transaction is paid out
9 to the intended recipient, the rate of exchange for the transaction
10 is not required to be set forth on the receipt.

11 ~~SEC. 13.~~

12 *SEC. 14.* Section 2105 of the Financial Code is amended to
13 read:

14 2105. (a) Each licensee or agent shall prominently post on the
15 premises of each branch office that conducts money transmission
16 a notice stating that:

17
18 "If you have complaints with respect to any aspect of the money
19 transmission activities conducted at this location, you may contact the
20 California Department of Business Oversight at its toll-free telephone
21 number, 1-800-622-0620, by email at consumer.complaint@dfi.ca.gov
22 consumer.services@dbo.ca.gov, or by mail at Department of Business
23 Oversight, Consumer Services, 1810 13th Street, Sacramento, CA 95811."
24 *1515 K Street, Suite 200, Sacramento, CA 95814.*"

25
26 (b) The commissioner may by order or regulation modify the
27 content of the notice required by this section. This notice shall be
28 printed in English and in the same language principally used by
29 the licensee or any agent of the licensee to advertise, solicit, or
30 negotiate either orally or in writing, with respect to money
31 transmission at that branch office. The information required in this
32 notice shall be clear, legible, and in letters not less than one-half
33 inch in height. The notice shall be posted in a conspicuous location
34 in the unobstructed view of the public within the premises. The
35 licensee shall provide to each of its agents the notice required by
36 this section. In those locations operated by an agent, the agent, and
37 not the licensee, shall be responsible for the failure to properly
38 post the required notice.

39 (c) In the event that a licensee or agent conducts money
40 transmission activity via an Internet Web site or mobile application

1 that is not in a branch office, the commissioner may authorize an
2 alternative form of the notice required in subdivision (a).

3 ~~SEC. 14.~~

4 *SEC. 15.* Section 2124 of the Financial Code is amended to
5 read:

6 2124. (a) A licensee shall maintain the following records for
7 determining its compliance with this division for at least three
8 years:

9 (1) A record of each payment instrument or stored value
10 obligation sold.

11 (2) A general ledger posted at least monthly containing all asset,
12 liability, capital, income, and expense accounts.

13 (3) Bank statements and bank reconciliation records.

14 (4) Records of outstanding payment instruments and stored
15 value obligations.

16 (5) Records of each payment instrument and stored-value
17 obligation paid within the three-year period.

18 (6) A list of the last known names and addresses of all of the
19 licensee’s agents and their branch offices.

20 (7) Any other records the commissioner reasonably requires by
21 order or regulation.

22 (b) A licensee or its agent shall maintain records of any receipts
23 provided pursuant to Section 2102 for six months or a longer period
24 of time specified in the contract between the licensee and its agent.

25 (c) The items specified in subdivisions (a) and (b) may be
26 maintained in any form of record.

27 (d) Records may be maintained outside this state if they are
28 made available to the commissioner on seven days’ notice that is
29 sent in a record.

30 (e) If records not required to be maintained in English pursuant
31 to Section 456 are in a language other than English, the licensee
32 shall provide records translated into English within seven days’
33 notice that is sent in a record.

34 (f) Each licensee shall maintain any other records required by
35 the commissioner.

36 ~~SEC. 15.~~

37 *SEC. 16.* Section 2175 of the Financial Code is amended to
38 read:

39 2175. The commissioner may offer informal guidance to any
40 prospective applicant for a license under this division, regarding

1 the conditions of licensure that may be applied to that person. The
2 commissioner shall inform any applicant that requests that guidance
3 of the minimum net worth, and other licensing requirements, that
4 will be required of that applicant, based on the information
5 provided by the applicant concerning its plan to conduct business
6 under this division, and the factors used to make that determination
7 as described in Section 2040.

8 ~~SEC. 16.~~

9 *SEC. 17.* Section 2176 is added to the Financial Code, to read:

10 2176. At any time, if the commissioner deems it necessary for
11 the general welfare of the public, he or she may exercise any power
12 set forth in this division with respect to a money transmission
13 business, regardless of whether an application for a license has
14 been filed with the commissioner, a license has been issued, or, if
15 issued, the license has been surrendered, suspended, or revoked.

16 ~~SEC. 17.~~

17 *SEC. 18.* No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.