

AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2420

Introduced by Assembly Member Firebaugh
(Principal coauthor: Senator Ortiz)

February 24, 2000

An act to amend Sections 1807, 1810, 1810.5, 1815, and 1826 of, and to add Section 1815.5 to, the Financial Code, relating to money transmissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2420, as amended, Firebaugh. Money transmitters: transmission of money abroad.

Existing law provides for the regulation of transmission of money abroad by licensed money transmitters. Existing law requires that moneys received by a licensee for transmission to a foreign country be forwarded or instructions committing equivalent funds be given within 10 days after the receipt of funds for transmission abroad.

This bill would require licensed money transmitters to file with the Commissioner of Financial Institutions a report of the average exchange rates offered during a quarterly period and the average cost of foreign currency paid by the licensee for the previous quarter for each currency exchanged. The Department of Financial Institutions would be required to compile on a quarterly basis a report listing the exchange rates for each licensee and the average cost of foreign currency paid

by the licensee for the previous quarter for each currency exchanged.

This bill would require a licensee to forward money or provide instructions committing equivalent funds within 5 days of the receipt of funds for transmission moneys.

This bill would also require that any advertising by a licensee for the transmission of money in which any commission or fee is quoted and for which transmissions are to be made in currency other than United States dollars, include a disclosure with regard to rates of exchange set and received by the licensee.

The bill would also limit the exchange rate charged by any licensee with respect to an international money transfer to not exceed 5% of the average cost of foreign currency paid by the licensee during the previous quarter. The bill would also provide for civil remedies for persons injured by licensees, including the award of civil penalties for the violation of certain provisions regulating licensed money transmitters and would make certain unlawful business practice provisions applicable to certain of the bill's disclosure requirements. Because a violation of the provisions governing unlawful business practices is a misdemeanor, this bill would enlarge the scope of an existing crime and would thereby impose a state-mandated local program.

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 1807 of the Financial Code is
- 2 amended to read:
- 3 1807. (a) The commissioner may by order or
- 4 regulation grant exemptions from this section in any case



1 in which the commissioner finds that the requirements of
2 this section are not necessary.

3 (b) Each licensee shall, within 90 days after the end of
4 each fiscal year, or within any extended time as the
5 commissioner may prescribe, file with the commissioner
6 an audit report for the fiscal year.

7 (c) The audit report required by subdivision (b) shall
8 comply with all of the following provisions:

9 (1) The audit report shall contain audited financial
10 statements of the licensee for or as of the end of the fiscal
11 year prepared in accordance with generally accepted
12 accounting principles and any other information as the
13 commissioner may require.

14 (2) The audit report shall be based upon an audit of the
15 licensee conducted in accordance with generally
16 accepted auditing standards and any other requirements
17 as the commissioner may prescribe.

18 (3) The audit report shall be prepared by an
19 independent certified public accountant or independent
20 public accountant who is satisfactory to the
21 commissioner.

22 (4) The audit report shall include or be accompanied
23 by a certificate of opinion of the independent certified
24 public accountant or independent public accountant that
25 is satisfactory in form and content to the commissioner.
26 If the certificate or opinion is qualified, the commissioner
27 may order the licensee to take any action as the
28 commissioner may find necessary to enable the
29 independent or certified public accountant or
30 independent public accountant to remove the
31 qualification.

32 (d) Each licensee shall, not more than 45 days after the
33 end of each quarter (except the fourth quarter of its fiscal
34 year), or within a longer period as the commissioner may
35 by regulation or order specify, file with the commissioner
36 a report containing all of the following:

37 (1) Financial statements, including balance sheet,
38 income statement, statement of changes in shareholders'
39 equity, and statement of cash flows, for, or as of the end
40 of, that fiscal quarter, verified by two of the licensee's



1 principal officers. The verification shall state that each of
2 the officers making the verification has a personal
3 knowledge of the matters in the report and that each of
4 them believes that each statement on the report is true.

5 (2) The current address of the headquarters office and
6 each branch office of the licensee and each agent at which
7 the licensee receives transmission money in this state.

8 (3) The name and business address of each person who
9 acted as an agent of the licensee during the quarter in this
10 state, and if ~~such~~ *that* person is no longer an agent of the
11 licensee, the date on which ~~such~~ *the* relationship
12 terminated.

13 (4) ~~Such—other~~ *Other* information ~~as~~ *that* the
14 commissioner may by regulation or order require.

15 (e) Each licensee shall file with the commissioner ~~such~~
16 other reports as and when the commissioner may by
17 regulation or order require.

18 (f) Each licensee engaged in the business of money
19 transmission shall, not more than 10 days after the end of
20 each quarter, or within a longer period as the
21 commissioner may by regulation or order specify, file
22 with the commissioner a written report containing the
23 average of the rates of exchange offered to its customers
24 during that quarter for converting United States
25 currency to foreign currency, for each currency
26 exchanged by that licensee. The report shall also include
27 the average cost of foreign currency paid by the licensee,
28 for each currency exchanged by that licensee, for the
29 previous quarter.

30 On a quarterly basis, the Department of Financial
31 Institutions shall compile a report listing the average of
32 the rates of exchange offered to its customers during that
33 quarter by each licensee engaged in the business of
34 money transmission for converting United States
35 currency to foreign currency, for each currency
36 exchanged by that licensee. This report shall also include
37 the average costs of foreign currency paid by each
38 licensee, for each currency exchanged by that licensee,
39 for the previous quarter. This report shall also report the
40 quarterly average of the rates for that exchange as



1 published in the Wall Street Journal. This information
2 shall be posted each quarter on the department's web site
3 and reported to the Legislature annually.

4 SEC. 2. Section 1810 of the Financial Code is amended
5 to read:

6 1810. (a) Every licensee or its agent shall forward all
7 moneys received for transmission to a foreign country or
8 provide instructions committing equivalent funds to the
9 person designated by the customer within five days after
10 receiving that money, unless otherwise ordered by his or
11 her customer.

12 (b) Whenever a licensee, either directly or indirectly
13 through an agent, receives money for transmission by
14 means of selling a check or draft of the type described in
15 subdivision (b) of Section 1800.5, the purchaser of the
16 instrument shall be deemed to have ordered compliance
17 with subdivision (a), as follows:

18 (1) In case the instrument is payable at a definite time,
19 not later than that definite time.

20 (2) In case the instrument is payable on demand, on or
21 before the next business day.

22 SEC. 3. Section 1810.5 of the Financial Code is
23 amended to read:

24 1810.5. (a) Every licensee or its agent shall refund to
25 the customer within 10 days of receipt of the customer's
26 written request for a refund any and all moneys received
27 for transmission to a foreign country unless any of the
28 following occurs:

29 (1) The funds have been forwarded within five days of
30 the date of receipt.

31 (2) Instructions have been given committing an
32 equivalent amount of money to the person designated by
33 the customer within five days of the date of the receipt
34 of the funds from the customer.

35 (3) The customer instructs the licensee to transmit the
36 moneys at a time beyond five days. If the customer gives
37 instructions as to when the moneys shall be forwarded or
38 transmitted and the moneys have not yet been forwarded
39 or transmitted, the licensee or its agent shall refund the



1 customer's money within 10 days of receipt of the
2 customer's written request for a refund.

3 (b) A receipt shall be provided by a licensee or its
4 agent to a customer which shall be made available to the
5 customer in English and in the language principally used
6 by that licensee or that agent to advertise, solicit, or
7 negotiate, either orally or in writing, at that office if other
8 than English. The receipt shall either include or have
9 attached a conspicuous statement in English and in the
10 language principally used by the licensee or that agent to
11 advertise, solicit, or negotiate, either orally or in writing
12 at that office if other than English in a size equal to at least
13 10-point bold type, as follows:

14
15 RIGHT TO REFUND

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

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

29 If you want a refund, you must mail or deliver your
30 written request to _____ (name of licensee or its
31 agent) at _____ (mailing address of licensee or its
32 agent). If you do not receive your refund, you may be
33 entitled to your money back plus a penalty of up to \$1,000
34 and attorney's fees pursuant to Section 1810.5 of the
35 California Financial Code."

36
37 (c) A cause of action under this section may be
38 brought in small claims court if it does not exceed the
39 jurisdiction of that court, or in any other appropriate



1 court. The customer shall be entitled to recover each of
2 the following:

3 (1) Any and all moneys received for transmission to a
4 foreign county, plus any fees and charges paid by the
5 customer.

6 (2) A penalty in an amount not to exceed one
7 thousand dollars (\$1,000).

8 The court shall award the prevailing party costs and
9 attorney's fees.

10 SEC. 4. Section 1815 of the Financial Code is amended
11 to read:

12 1815. (a) The receipt presented to each customer for
13 each transaction pursuant to subdivision (b) of Section
14 1810.5 shall clearly state the rate of exchange for the
15 particular transaction, the amount of commission or fees,
16 and the net exchange after all fees and commissions have
17 been deducted. In the same currency units, the receipt
18 shall also state the total amount of currency presented by
19 the customer and the total amount to be received by the
20 beneficiary designated by the customer. The receipt shall
21 also state the total amount to be received by the
22 beneficiary designated by the customer in the currency
23 units of the foreign country. These disclosures shall be in
24 English and in the same language as that principally used
25 by the licensee or any agent of the licensee to advertise,
26 solicit, or negotiate, either orally or in writing, at that
27 office if other than English.

28 (b) All window and exterior signs concerning the rates
29 of exchange shall clearly state in English and in the same
30 language principally used by the licensee or any agent of
31 the licensee to advertise, solicit, or negotiate, either orally
32 or in writing, at that office if other than English, the daily
33 rate of exchange offered by the licensee to its customers
34 for exchanging the currency of the United States for
35 foreign currency and the benchmark interbank rate, as
36 published in the Wall Street Journal on the last business
37 day preceding the date of the transaction.

38 (c) All interior signs and advertising, if rates of
39 exchange, commissions, or fees are quoted, shall clearly
40 state rates of exchange for exchanging the currency of the



1 United States for foreign currency, and all commissions
2 and all fees charged on transactions. All interior signs and
3 advertising, if rates of exchange, commissions, or fees are
4 quoted, shall also state the latest quarterly average for the
5 interbank market exchange rate as published daily in the
6 Wall Street Journal, and the latest quarterly average for
7 the exchange rate offered to customers by the licensee.

8 (d) At each office of each licensee and each agent,
9 there shall be disclosed in those offices in this state the
10 information specified in subdivision (b) in English and in
11 the same language principally used by the licensee or any
12 agent of the licensee to advertise, solicit, or negotiate,
13 either orally or in writing, with respect to receiving
14 money or its equivalent for transmission to a foreign
15 country at that office.

16 (e) If the customer does not specify at the time the
17 currency is presented to the licensee or its agent the
18 country to which the currency is to be transmitted, the
19 rate of exchange for the transaction is not required to be
20 set forth on the receipt.

21 (f) All advertising in which any commission or fee is
22 quoted shall include the following disclosure:

23 “In addition to the transfer fees applicable to this
24 transaction, a currency exchange rate set by (name of
25 licensee engaged in the business of receiving money for
26 transmission to foreign countries) will be applied. This
27 exchange rate may not be the same as the rate at which
28 (name of licensee engaged in the business of receiving
29 money for transmission to foreign countries) purchases
30 foreign currency.”

31 This disclosure shall be made in the same language
32 principally used in the advertisement and shall be printed
33 in a font size at least one-third as large as the print used
34 to advertise the commission, fee, or exchange rate. The
35 foregoing provisions shall not apply to any transaction
36 that is paid to the receiver in United States dollars.

37 (g) For transactions to be paid out in currency other
38 than United States dollars, the following disclosure shall
39 be included in any form provided to each customer or on



1 the receipt provided to each customer pursuant to
2 subdivision (b) of Section 1810.5.

3 “In addition to commission and fees applicable to this
4 transaction, a currency exchange rate will be applied.
5 United States currency is converted to foreign currency
6 at an exchange rate set by (name of the licensee engaged
7 in the business of money transmission). This exchange
8 rate may not be the same as the rate at which (name of
9 licensee engaged in the business of receiving money for
10 transmission to foreign countries) purchases foreign
11 currency. This difference between the rate provided to
12 customers and the rate received by (name of the licensee
13 engaged in the business of money transmission) is the
14 foreign exchange rate spread that may accrue to (name
15 of the licensee engaged in the business of money
16 transmission), in addition to commission and fees.”

17 “Please ask the clerk for information concerning the
18 currency exchange rate applicable to your transaction
19 and the open market exchange rate as published in the
20 Wall Street Journal on the last business day preceding the
21 date of the transaction. You may also find out the current
22 foreign exchange rates being provided by (name of the
23 licensee engaged in the business of money transmission)
24 to its customers by calling toll-free 1-800-XXX-XXXX.”

25 “For questions about currency exchange rates and
26 California law, please contact the Department of
27 Financial Institutions at 1-800-622-0620. For information
28 regarding the average rates of exchange offered by this
29 and other money transmitters for the previous quarter,
30 please call the department or visit their internet web site
31 at www.xxxxxx.gov.”

32 This disclosure shall be made in English and any other
33 language principally used at that office by the licensee or
34 any agent of the licensee to advertise in writing with
35 respect to the transmission of money to a foreign country
36 by that licensee.

37 This disclosure shall be made in bold type and in a font
38 size no smaller than 10-point. It shall be centered and at
39 the top of the first page of the form provided to the
40 consumer or on the receipt provided pursuant to



1 subdivision (b) of Section 1810.5, or may be placed on a
2 subsequent page of the form or receipt but only if the
3 following statement is placed in 10-point bold type at the
4 top of the first page:

5 “See page _____ for important information
6 regarding the currency exchange rate applicable to this
7 transaction.”

8 SEC. 5. Section 1815.5 is added to the Financial Code,
9 to read:

10 1815.5. (a) In the case of any licensee that initiates an
11 international money transfer on behalf of a customer, the
12 exchange rate charged the customer by the licensee for
13 the transfer of money to the country to which the transfer
14 is made may not exceed by more than 5 percent the
15 average cost of foreign currency paid by the licensee
16 during the previous quarter.

17 (b) A person injured by a violation of subdivision (a)
18 may commence an action in small claims court if the
19 damages sought in the action do not exceed the
20 jurisdiction of that court, or in any other court of
21 competent jurisdiction.

22 (c) If any licensee fails to comply with subdivision (a),
23 a court of competent jurisdiction may award to the person
24 injured damages, if any, and in addition a civil penalty not
25 to exceed two thousand dollars (\$2,000) for each
26 violation.

27 SEC. 6. Section 1826 of the Financial Code is amended
28 to read:

29 1826. (a) Except as provided in subdivision (c) of
30 Section 1815.5, any person who violates this chapter shall
31 be liable to the people of the State of California in an
32 action brought by the commissioner for a civil penalty not
33 to exceed five thousand dollars (\$5,000) for each violation
34 or, in the case of a continuing violation, one thousand
35 dollars (\$1,000) for each day or part thereof during which
36 the violation continues.

37 (b) Any knowing and willful violation of the disclosure
38 provisions of this chapter constitutes an unlawful business
39 practice within the meaning of Section 17500 of the
40 Business and Professions Code.



1 (c) A cause of action for a violation of this chapter may
2 be commenced in small claims court if it does not exceed
3 the jurisdiction of that court, or in any other court of
4 competent jurisdiction. In that cause of action, the
5 customer shall be entitled to recover any and all moneys
6 received for transmission to a foreign country, plus any
7 fees and charges paid by the customer.

8 Except as provided in subdivision (c) of Section 1815.5,
9 a court of competent jurisdiction may additionally impose
10 a penalty payable to the customer in an amount not to
11 exceed one thousand dollars (\$1,000) for each violation.
12 The court may also award the prevailing party court costs
13 and reasonable attorney's fees.

14 SEC. 7. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24

