

BILL ANALYSIS

C.S.H.B. 2218
By: McCall
Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas law currently regulates money services businesses under separate chapters of the Finance Code. Chapter 152, the Texas Sale of Checks Act, regulates businesses that issue and sell checks, money orders, stored value cards, and other payment instruments used to transfer money from one person to another. Chapter 153 regulates businesses that receive currency or an instrument payable in currency for transmission, exchange or transportation. The licensing requirements applicable to a particular activity depend primarily upon the form in which or how the money is received.

Texas law needs to be modernized as a result of the rapid pace of change in technology, the increasing importance of monitoring money transfers to detect money laundering and terrorist financing, and the need to foster more interstate cooperation among States regulating businesses operating globally. Regulation of nonbank money services businesses is left primarily to the States.

The purpose of this substitute is to consolidate the regulation of money services businesses into one act, the Money Services Act, and repeal existing Chapters 152 and 153. The effect of this consolidation is to reflect and clarify the requirements and procedures that exist under current law while creating a statutory framework that treats money services businesses that engage in functionally similar transactions in a uniform manner. The bill also serves law enforcement interests at the state and federal level by safeguarding against money laundering and terrorist activities as well as broadening the Texas Department of Banking enforcement authority over licensed and unlicensed holders including their agents.

C.S.H.B. 2218 modernizes the regulation of money services business in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly delegated to the Finance Commission of Texas in SECTION 1 (Sections 151.102, Finance Code) of this bill.

ANALYSIS

C.S.H.B. 2218 amends Title 3, Subtitle E, Finance Code as follows:

The substitute consolidates and modernizes the regulation of money services businesses into one act, Chapter 151, the Money Services Act, and repeals existing Chapters 152 and 153.

The substitute provides that the Texas Department of Banking administers the chapter (Section 151.101). Grants the Finance Commission of Texas the authority to adopt rules to administer and enforce the chapter (Section 151.102). Clarifies that the commissioner's powers are cumulative and permits the commissioner to impose reasonable conditions upon a license (Section 151.103). Authorizes the commissioner to conduct investigations and to cooperate, coordinate and share information with other governmental agencies that have jurisdiction over money services businesses or activities subject to the chapter (Section 151.105). Provides that a license holder, authorized delegate, or person that engages in activities that require a license under the chapter is considered to consent to the jurisdiction of Texas courts (Section 151.106).

The substitute provides that an applicant for a money services license must possess the financial condition and responsibility, financial and business experience, competence, character, and general fitness to warrant the belief that the applicant will conduct business in a lawful manner, among other qualifications (Section 151.202). Directs the commissioner to consider the qualifications of certain persons associated with the applicant in determining whether to grant a license. Identifies specific criminal offenses, conviction for which within the 10 years preceding the application generally disqualifies the applicant, including offenses related to money laundering, structuring, drug trafficking or terrorist funding (Section 151.202). Specifies what must be included in an application for a money services license (Section 151.203), sets out provisions for the processing and investigation of an application (Section 151.204), provides for the issuance or denial of a license (Section 151.205), and prohibits the transfer or assignment of a license issued under the chapter (Section 151.206). Provides that a license expires on August 15 of each year and establishes procedures and requirements for license renewal (Section 151.207). Authorizes a license holder to surrender its license under specified procedures, but clarifies that license surrender does not affect the license holder's criminal or civil liability (Section 151.208). Provides that no fee or cost paid under the chapter in connection with an application or renewal is refundable.

The substitute applies specifically to a money transmission license. Defines terms that apply to the money transmission business (Section 151.301). Describes activities that require a money transmission license (Section 151.302). Provides specific qualifications and requirements for a money transmission license that are in addition to the general requirements in Subchapter C (Sections 151.303 and 151.304). Establishes net worth and security requirements based upon specific factors related to the licensed business (Sections 151.303 and 151.307). Requires maintenance of security and provides that a surety bond, irrevocable letter of credit, certificate of deposit, or another cash equivalent constitute acceptable security (Section 151.308). Requires a money transmission license holder to maintain permissible investments in a specified amount (Section 151.309).

The substitute provides standards for the conduct of a money transmission business. Provides that a money transmission license holder is liable for the payment of all money received for transmission either directly or through an "authorized delegate" (agent). Establishes conditions for the conduct of business through an agent, including a requirement to conduct a risk-based background check of the authorized delegate (Section 151.402). Specifies standards of conduct applicable to an agent (Section 151.403). Imposes a trust on all money submitted to a license holder or its agent for transmission (Section 151.404). Establishes disclosure requirements applicable to money transmission transactions (Section 151.405).

The substitute applies specifically to a currency exchange license. Defines terms that apply to the currency exchange business (Section 151.501). Describes activities that require a currency exchange license unless the person is licensed for money transmission or is otherwise exempt (Section 151.502). Provides specific qualifications and requirements for a currency exchange license that are in addition to the general requirements in Subchapter C (Section 151.503). Requires maintenance of security in the amount of \$2,500, reflecting the minimal consumer protection and safety and soundness concerns presented by a business engaged in essentially contemporaneous transactions that do not involve outstanding obligations (Sections 151.504 and 151.506).

The substitute establishes the examination, reporting and recordkeeping requirements that apply to all persons licensed under the chapter and to authorized delegates (agents). Authorizes the commissioner to examine a license holder or agent as necessary or appropriate to administer and enforce the chapter and other applicable law, including the Bank Secrecy Act and the U.S.A. Patriot Act, and establishes guidelines for the conduct of such examinations (Section 151.601). Specifies required recordkeeping (Section 151.602) and reports (Section 151.603), including reports related to felony indictments and convictions, and license revocation or suspension proceedings by other state regulators (Section 151.605). Requires commissioner approval for change of control of the license holder (Section 151.505). Provides that financial and other private information obtained by the department under the chapter is confidential and may not be disclosed subject to exceptions in statute or rule (Section 151.606).

The substitute provides for expanded enforcement authority under Chapter 151 as compared to current Chapters 152 and 153. Provides the banking commissioner with a broad range of enforcement authority and options. Authorizes suits in district court for injunctive relief for violations (Section 151.701). Authorizes the commissioner to issue a cease and desist order against a person that engages in unlicensed money services business activities (Section 151.702). Authorizes the commissioner to suspend or revoke a license or direct a license holder to revoke the designation of an agent for specified grounds (Section 151.703). Authorizes the commissioner to take direct action to suspend or revoke an agent's status in certain circumstances (Section 151.704). Provides for the issuance of cease and desist orders if necessary to protect the interests of a license holder, its customers, or the public (Section 151.705). Authorizes the issuance of consent orders that have the same effect as a final order (Section 151.706). Authorizes the commissioner to impose, after notice and hearing, administrative penalties up to \$5,000 (Section 151.707). Authorizes imposition of an administrative penalty for patterns of violations and wilful disregard for legal requirements (Section 151.107). Permits collection of an administrative penalty out of the security maintained by the license holder (Section 151.107). Establishes the notice, hearing and other procedures that apply to non-emergency orders (Section 151.709) and the requirements and notice and hearing procedures that apply to emergency orders (Section 151.710).

The substitute provides that all administrative proceedings under the chapter must be conducted in accordance with Chapter 2001, Government Code, and Title 7, Chapter 9, Texas Administrative Code, and that a final order issued by the commissioner after hearing may be appealed to the district court of Travis County (Section 151.801.)

The substitute provides that a license issued under Chapter 152 or Chapter 153, Finance Code, in effect on September 1, 2005, remains in effect until August 15, 2006, at which time the license expires unless the license holder renews the license in accordance with this Act.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2218 modifies the original by removing Section 151.004 due to the fact that the Code Construction Act Addresses the scope of the statute's statutory references.