

BILL ANALYSIS

Senate Research Center
83R12181 RWG-F

H.B. 2134
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Business & Commerce
5/10/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Banking regulates money services business (MSB), which is defined as money transmission and currency exchange. The Money Services Act and Chapter 278 (Regulation of Currency Transmissions) of the Finance Code governs MSB. The Money Services Act provides for two types of licenses: money transmission and currency exchange. In addition, it requires anyone who conducts these business activities to obtain the appropriate license. In 2012, there were 135 MSB license holders who conducted over \$75 billion in transactions.

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 required, among other things, the creation of a federal registry for the coordination of licensing of mortgage loan originators in all states. To that end, the Nationwide Mortgage Licensing System and Registry (NMLS) was created to be a secure, web-based licensing system that allows companies and individuals to apply for, maintain, and renew licenses in one or more states through a single record.

To increase efficiency of multi-state regulation, NMLS has been expanding for use with other types of licenses, including MSB license applicants. NMLS allows state regulators to process criminal and personal background checks, as well as other required application materials. The NMLS also allows state regulatory agencies to coordinate with one another regarding license holders and new applicants, and provides a single point of contact for filing documents that are required by multiple states.

Currently, MSB license applicants and licensees conducting business in multiple states must navigate numerous, often disparate state licensing schemes, leading to an inefficient and burdensome system.

H.B. 2134 authorizes the use of NMLS for regulation of MSB licenses. H.B. 2134 additionally expands the banking commissioner's regulatory cooperation authority; improves the efficiency of administering the statutes; updates, clarifies, and corrects language; and eliminates conflicts with federal regulations.

H.B. 2134 amends current law relating to the regulation of money services businesses.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas (finance commission) is modified in SECTION 6 (Section 151.207, Finance Code) of this bill.

Rulemaking authority is expressly granted to the finance commission in SECTION 19 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.002(b)(3), Finance Code, to redefine "Bank Secrecy Act."

SECTION 2. Amends Section 151.104(a), Finance Code, to authorize the Banking Commissioner of Texas or a person designated by the banking commissioner and acting under

the banking commissioner's direction and authority (commissioner) to conduct certain investigations in or outside this state and the United States as the commissioner considers necessary or appropriate to administer and enforce this chapter (Regulation of Money Services Businesses), including certain investigations, including an investigation to determine whether to approve an application for a license, rather than to approve an application for or renewal of a license, or a request for approval or exemption filed under this chapter or a rule adopted or order issued under this chapter.

SECTION 3. Amends Section 151.105, Finance Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes the commissioner, to efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, to cooperate, coordinate, and share information with an organization the membership of which is made up of state or federal governmental agencies described by Subsection (a) (relating to authorizing the commissioner to cooperate, coordinate, and share information with another state, federal, or foreign governmental agency). Authorizes the commissioner to:

- (1) enter into a written cooperation, coordination, or information-sharing contract or agreement with the organization; and
- (2) share information, provided that the organization agrees in writing to maintain the confidentiality and security of the shared information.

SECTION 4. Amends Subchapter C, Chapter 151, Finance Code, by adding Section 151.2031, as follows:

Sec. 151.2031. USE OF NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. (a) Defines "Nationwide Mortgage Licensing System and Registry" or "nationwide registry" in this section.

(b) Authorizes the commissioner to require that a person submit through the Nationwide Mortgage Licensing System and Registry in the form and manner prescribed by the commissioner and acceptable to the registry any information or document or payment of a fee required to be submitted under this chapter or rules adopted under this chapter.

(c) Authorizes the commissioner to use the nationwide registry as a channeling agent for obtaining information required for licensing purposes under this chapter or rules adopted under this chapter, including criminal history record information from the Federal Bureau of Investigation, the United States Department of Justice, or any other agency or entity at the commissioner's discretion; information related to any administrative, civil, or criminal findings by a governmental jurisdiction; and information requested by the commissioner under Section 151.203(a)(3) (relating to requiring an application for license under this chapter to contain any other information or documentation the commissioner reasonably requires to determine whether the applicant qualifies for and should be issued the license for which application is made).

SECTION 5. Amends the heading to Section 151.207, Finance Code, to read as follows:

Sec. 151.207. CONTINUATION OF LICENSE; ANNUAL REPORT AND FEE.

SECTION 6. Amends Sections 151.207(a), (b), (c), (d), (e), and (f), Finance Code, as follows:

(a) Creates this subsection from text of existing Subsection (b). Authorizes the commissioner to suspend or revoke a license holder's license if the license holder does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license or currency exchange license, as applicable, rather than requires, as a condition of renewal, a license holder to continue to

possess the qualifications and satisfy the requirements that apply to an applicant for a new money transmission license or currency exchange license, as applicable.

Deletes existing text of Subsection (a) providing that, regardless of the date on which a license under this chapter is issued, the license expires on August 15 of each year unless the license is renewed in accordance with this section (Renewal of License) or is previously surrendered by the license holder or suspended or revoked by the commissioner.

(b) Requires a license holder annually, in addition to complying with Subsection (a), rather than additionally, not later than July 1 of each year, to:

(1) pay a license fee, rather than pay an annual renewal fee, in an amount established by the Finance Commission of Texas (finance commission) rule; and

(2) submit a report, rather than a renewal report, that is under oath, is in the form and medium required by the commissioner, and contains:

(A) if the license is a money transmission license, an audited unconsolidated financial statement dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(B) if the license is a currency exchange license, a financial statement, audited or unaudited, dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year; and

(C) documentation and certification, or any other information the commissioner reasonably requires to determine the security, net worth, permissible investments, and other requirements the license holder must satisfy and whether the license holder continues to meet the qualifications and requirements for licensure.

(c) Requires the commissioner, if the Texas Department of Banking (TDB) does not receive a license holder's annual license fee and complete annual report on or before the due date prescribed by the commissioner under this section, rather than if TDB does not receive a license holder's renewal fee and complete renewal report on or before July 1, to notify the license holder in writing that:

(1) the license holder is required to submit the report and pay the license fee not later than the 45th day after the due date prescribed by the commissioner, rather than the license holder has until August 15 to submit the renewal report and pay the renewal fee; and

(2) the license holder is required to pay a late fee, in an amount that is established by finance commission rule and not subject to appeal, for each business day after the report due date specified by the commissioner that the commissioner does not receive the completed report and license fee, rather than for each business day after July 1 that the commissioner does not receive the completed renewal report and renewal fee.

(d) Provides that, if the license holder fails to submit the completed annual report and pay the annual license fee and any late fee due within the time prescribed by Subsection (c)(1), the license expires, and the license holder is required to cease and desist from engaging in the business of money transmission or currency exchange, as applicable, as of that date, rather than provides that, if the license holder fails to submit the completed renewal report and pay the renewal fee and any late fee due, the license expires effective 5 p.m. central daylight time on August 15, and the license holder is required to cease and desist from engaging in the business of money transmission or currency exchange, as applicable, as of that time. Provides that the expiration of a license is not subject to appeal.

(e) Requires TDB, on timely receipt of a license holder's complete annual report, annual license fee, and any late fee due, rather than on timely receipt of a license holder's complete renewal report, renewal fee, and any late fee due, to review the report and, if necessary, investigate the business and records of the license holder. Authorizes the commissioner, on completion of the review and investigation, if any, to impose conditions on the license the commissioner considers reasonably necessary or appropriate, rather than to impose conditions on the renewal of the license the commissioner may consider reasonably necessary or appropriate, or suspend or revoke the license on the basis of a ground specified in Section 151.703 (Suspension and Revocation of License). Deletes existing text authorizing the commissioner, on completion of the review and investigation, if any, to renew the license. Makes nonsubstantive changes.

(f) Authorizes the commissioner, on written application and for good cause shown, to extend the due date for filing the annual license fee and annual report required under this section, rather than to extend the time for filing the fee and report required under this section.

SECTION 7. Amends Section 151.208(c), Finance Code, as follows:

(c) Provides that the surrender of a license does not reduce or eliminate a license holder's civil or criminal liability arising from any acts or omissions before the surrender of the license, including any administrative action undertaken by the commissioner to revoke or suspend a license, to assess an administrative penalty, to order the payment of restitution, or to exercise any other authority under this chapter, rather than provides that the surrender of a license does not reduce or eliminate a license holder's civil or criminal liability arising from any acts or omissions before the surrender of the license, including any administrative action undertaken by the commissioner to deny the renewal of a license, to revoke or suspend a license, to assess an administrative penalty, to order the payment of restitution, or to exercise any other authority under this chapter. Provides that, further, the surrender of a license does not release the security required of the license holder under Section 151.308 (Security) or 151.506 (Security).

SECTION 8. Amends Section 151.209, Finance Code, to provide that a fee or cost paid under this chapter is not refundable, rather than to provide that a fee or cost paid under this chapter in connection with an application or renewal is not refundable.

SECTION 9. Amends Section 151.301(b)(8), Finance Code, to redefine "stored value."

SECTION 10. Amends Section 151.306(b), Finance Code, to prohibit the effective period for a temporary license from exceeding 90 days from the date the license is issued, provided that the commissioner is authorized to extend the period for not more than an additional 90 days, rather than not more than an additional 30 days, if necessary to complete the processing of a timely filed application for which approval is likely.

SECTION 11. Amends Section 151.308(c), Finance Code, as follows:

(c) Requires that the security be in a form satisfactory to the commissioner; be payable to any claimant or to the commissioner, on behalf of a claimant or this state, for any liability arising out of the license holder's money transmission business in this state, incurred under, subject to, or by virtue of this chapter; and if the security is a bond, be issued by a qualified surety company authorized to engage in business in this state and acceptable to the commissioner or, if the security is an irrevocable letter of credit, be issued by a financial institution acceptable to the commissioner. Deletes existing text requiring that the security be conditioned on the faithful compliance of the license holder or the principals, responsible individuals, employees and authorized delegates of the license holder with this chapter or any rule adopted or order issued under this chapter. Makes a nonsubstantive change.

SECTION 12. Amends Section 151.401, Finance Code, to provide that a money transmission license holder is liable for the payment of all money or monetary value received for transmission directly or by an authorized delegate appointed in accordance with Section 151.402 (Conduct of Business Through Authorized Delegate), rather than received for transmission either directly or through an authorized delegate appointed in accordance with Section 151.402.

SECTION 13. Amends Sections 151.402(e) and (f), Finance Code, as follows:

(e) Requires a license holder to notify the license holder's authorized delegates and require the delegates to take any action required by the commissioner if:

(1) the license holder's license expired or is surrendered or revoked, rather than if the license holder fails to renew the license holder's license; or

(2) the license holder is subject to an emergency or final order that affects the conduct of the license holder's business through an authorized delegate.

Makes nonsubstantive changes.

(f) Requires a license holder to maintain a current list of authorized delegates located in this state or doing business with persons located in this state that includes the name and business address of each delegate and to provide the list to the commissioner on request. Requires a license holder that engages in business through 11 or more authorized delegates located in this state to include on the license holder's website a list of the names and addresses of the authorized delegates of the license holder located in this state and the delegates' business addresses. Requires the license holder to update the list quarterly.

SECTION 14. Amends Section 151.501(b), Finance Code, by amending Subdivision (2) to redefine "currency exchange" and adding Subdivision (3) to define "negotiable instrument."

SECTION 15. Amends Sections 151.603(a), (b), and (c), Finance Code, as follows:

(a) Requires an applicant or license holder to file a written report with the commissioner not later than the 15th day after the date the applicant or license holder knows or has reason to know of a material change in the information reported in an application or annual report required under Section 151.207(b)(2), rather than a material change in the information reported in an application or renewal report. Requires that the report describe the change and the anticipated impact of the change on the activities of the applicant or license holder in this state.

(b) Requires a money transmission license holder to prepare written reports and statements as follows:

(1) the annual report, rather than renewal report, required by Section 151.207(b)(2), including an audited unconsolidated financial statement that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year; and

(2)-(3) Makes no change to these subdivisions.

(c) Requires a currency exchange license holder to prepare a written report or statement as follows:

(1) the annual report, rather than the renewal report, required by Section 151.207(b)(2), including a financial statement that may be audited or unaudited and that is dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year; and

(2)-(3) Makes no change to these subdivisions.

SECTION 16. Amends Section 151.604(a), Finance Code, as follows:

(a) Requires a license holder to file a written report with the commissioner no later than the 15th day after the date the license holder knows or has reason to know of a material change in the information reported in an application or annual report required under Section 151.207(b)(2), rather than a material change in the information reported in an application or renewal report. Requires that the report describe the change and the anticipated impact of the change on the license holder's activities in this state.

SECTION 17. Amends Section 278.001(1), Finance Code, to redefine "currency."

SECTION 18. Repealer: Section 278.053 (Language of Disclosure), Finance Code.

SECTION 19. Requires the finance commission, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 20. Makes application of Section 151.104(a), Finance Code, as amended by this Act, prospective.

SECTION 21. Effective date: September 1, 2013.