

By: Carona

S.B. No. 1005

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of money services businesses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 151.002(b)(3), Finance Code, is amended to read as follows:

(3) "Bank Secrecy Act" means the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.), and its implementing regulations [~~set forth at 31 C.F.R. Part 103~~].

SECTION 2. Section 151.104(a), Finance Code, is amended to read as follows:

(a) The commissioner may conduct investigations in or outside this state and the United States as the commissioner considers necessary or appropriate to administer and enforce this chapter, including investigations to:

(1) determine whether 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;

(2) determine whether a person has violated or is likely to violate this chapter or a rule adopted or order issued under this chapter;

(3) determine whether a license or authorized delegate designation should be revoked or suspended;

(4) otherwise aid in the enforcement of this chapter

1 or a rule adopted or order issued under this chapter; and

2 (5) aid in the adoption of rules or issuance of orders
3 under this chapter.

4 SECTION 3. Section 151.105, Finance Code, is amended by
5 adding Subsection (b-1) to read as follows:

6 (b-1) To efficiently and effectively administer and enforce
7 this chapter and to minimize regulatory burden, the commissioner
8 may cooperate, coordinate, and share information with an
9 organization the membership of which is made up of state or federal
10 governmental agencies described by Subsection (a). The
11 commissioner may:

12 (1) enter into a written cooperation, coordination, or
13 information-sharing contract or agreement with the organization;
14 and

15 (2) share information, provided that the organization
16 agrees in writing to maintain the confidentiality and security of
17 the shared information.

18 SECTION 4. Subchapter C, Chapter 151, Finance Code, is
19 amended by adding Section 151.2031 to read as follows:

20 Sec. 151.2031. USE OF NATIONWIDE MORTGAGE LICENSING SYSTEM
21 AND REGISTRY. (a) In this section, "Nationwide Mortgage Licensing
22 System and Registry" or "nationwide registry" means a licensing
23 system developed and maintained by the Conference of State Bank
24 Supervisors or an affiliated organization to manage mortgage
25 licenses and other financial services licenses, or a successor
26 registry.

27 (b) The commissioner may require that a person submit

1 through the Nationwide Mortgage Licensing System and Registry in
2 the form and manner prescribed by the commissioner and acceptable
3 to the registry any information or document or payment of a fee
4 required to be submitted under this chapter or rules adopted under
5 this chapter.

6 (c) The commissioner may use the nationwide registry as a
7 channeling agent for obtaining information required for licensing
8 purposes under this chapter or rules adopted under this chapter,
9 including:

10 (1) criminal history record information from the
11 Federal Bureau of Investigation, the United States Department of
12 Justice, or any other agency or entity at the commissioner's
13 discretion;

14 (2) information related to any administrative, civil,
15 or criminal findings by a governmental jurisdiction; and

16 (3) information requested by the commissioner under
17 Section 151.203(a)(3).

18 SECTION 5. The heading to Section 151.207, Finance Code, is
19 amended to read as follows:

20 Sec. 151.207. CONTINUATION [~~RENEWAL~~] OF LICENSE; ANNUAL
21 REPORT AND FEE.

22 SECTION 6. Sections 151.207(a), (b), (c), (d), (e), and
23 (f), Finance Code, are amended to read as follows:

24 (a) If a [~~Regardless of the date on which a license under~~
25 ~~this chapter is issued, the license expires on August 15 of each~~
26 ~~year unless the license is renewed in accordance with this section~~
27 ~~or is previously surrendered by the license holder or suspended or~~

1 ~~revoked by the commissioner.~~

2 ~~[(b) As a condition of renewal, a]~~ license holder does not
3 ~~[must]~~ continue to meet ~~[possess]~~ the qualifications or ~~[and]~~
4 satisfy the requirements that apply to an applicant for a new money
5 transmission license or currency exchange license, as applicable,
6 the commissioner may suspend or revoke the license holder's
7 license.

8 (b) In addition to complying with Subsection (a)
9 ~~[Additionally, not later than July 1 of each year],~~ a license holder
10 must annually:

11 (1) pay a license ~~[an annual renewal]~~ fee in an amount
12 established by commission rule; and

13 (2) submit a ~~[renewal]~~ report that is under oath, is in
14 the form and medium required by the commissioner, and contains:

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

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

23 (C) documentation and certification, or any
24 other information the commissioner reasonably requires to
25 determine the security, net worth, permissible investments, and
26 other requirements the license holder must satisfy and whether the
27 license holder continues to meet the qualifications and

1 requirements for licensure.

2 (c) If the department does not receive a license holder's
3 annual license [~~renewal~~] fee and complete annual [~~renewal~~] report
4 on or before the due date prescribed by the commissioner under this
5 section [~~July 1~~], the commissioner shall notify the license holder
6 in writing that:

7 (1) the license holder shall [~~has until August 15 to~~]
8 submit the [~~renewal~~] report and pay the license [~~renewal~~] fee not
9 later than the 45th day after the due date prescribed by the
10 commissioner; and

11 (2) the license holder must pay a late fee, in an
12 amount that is established by commission rule and not subject to
13 appeal, for each business day after the report due date specified by
14 the commissioner [~~July 1~~] that the commissioner does not receive
15 the completed [~~renewal~~] report and license [~~renewal~~] fee.

16 (d) If the license holder fails to submit the completed
17 annual [~~renewal~~] report and pay the annual license [~~renewal~~] fee
18 and any late fee due within the time prescribed by Subsection
19 (c)(1), the license expires [~~effective 5 p.m. central daylight time~~
20 ~~on August 15~~], and the license holder must cease and desist from
21 engaging in the business of money transmission or currency
22 exchange, as applicable, as of that date [~~time~~]. The expiration of a
23 license is not subject to appeal.

24 (e) On timely receipt of a license holder's complete annual
25 [~~renewal~~] report, annual license [~~renewal~~] fee, and any late fee
26 due, the department shall review the report and, if necessary,
27 investigate the business and records of the license holder. On

1 completion of the review and investigation, if any, the
2 commissioner may:

3 (1) [~~renew the license,~~
4 [~~(2)~~] impose conditions on the [~~renewal of the~~
5 license the commissioner considers [~~may consider~~] reasonably
6 necessary or appropriate; or

7 (2) [~~(3)~~] suspend or revoke the license on the basis
8 of a ground specified in Section 151.703.

9 (f) On written application and for good cause shown, the
10 commissioner may extend the due date [~~time~~] for filing the annual
11 license fee and annual report required under this section.

12 SECTION 7. Section 151.208(c), Finance Code, is amended to
13 read as follows:

14 (c) The surrender of a license does not reduce or eliminate
15 a license holder's civil or criminal liability arising from any
16 acts or omissions before the surrender of the license, including
17 any administrative action undertaken by the commissioner to [~~deny~~
18 ~~the renewal of a license, to~~] revoke or suspend a license, to assess
19 an administrative penalty, to order the payment of restitution, or
20 to exercise any other authority under this chapter. Further, the
21 surrender of a license does not release the security required of the
22 license holder under Section 151.308 or 151.506.

23 SECTION 8. Section 151.209, Finance Code, is amended to
24 read as follows:

25 Sec. 151.209. REFUNDS. A fee or cost paid under this
26 chapter [~~in connection with an application or renewal~~] is not
27 refundable.

1 SECTION 9. Section 151.301(b)(8), Finance Code, is amended
2 to read as follows:

3 (8) "Stored value" means monetary value evidenced by
4 an electronic record that is prefunded and for which value is
5 reduced on each use. The term includes prepaid access as defined by
6 31 C.F.R. Section 1010.100(w). The term does not include an
7 electronic record that is:

8 (A) loaded with points, miles, or other
9 nonmonetary value; ~~or~~

10 (B) not sold to the public but distributed as a
11 reward or charitable donation; or

12 (C) redeemable only for goods or services from a
13 specified merchant or set of affiliated merchants, such as:

14 (i) a specified retailer or retail chain;

15 (ii) a set of affiliated companies under
16 common ownership;

17 (iii) a college campus; or

18 (iv) a mass transportation system.

19 SECTION 10. Section 151.306(b), Finance Code, is amended to
20 read as follows:

21 (b) The effective period for a temporary license may not
22 exceed 90 days from the date the license is issued, provided that
23 the commissioner may extend the period for not more than an
24 additional 90 ~~30~~ days if necessary to complete the processing of a
25 timely filed application for which approval is likely.

26 SECTION 11. Section 151.308(c), Finance Code, is amended to
27 read as follows:

1 (c) The security must:

2 (1) be in a form satisfactory to the commissioner;

3 (2) be payable to any claimant or to the commissioner,
4 on behalf of a claimant or this state, for any liability arising out
5 of the license holder's money transmission business in this state,
6 incurred under, subject to, or by virtue of this chapter; and

7 (3) [~~be conditioned on the faithful compliance of the~~
8 ~~license holder or the principals, responsible individuals,~~
9 ~~employees and authorized delegates of the license holder with this~~
10 ~~chapter or any rule adopted or order issued under this chapter; and~~

11 [(4)] if the security is a bond, be issued by a
12 qualified surety company authorized to engage in business in this
13 state and acceptable to the commissioner or, if the security is an
14 irrevocable letter of credit, be issued by a financial institution
15 acceptable to the commissioner.

16 SECTION 12. Section 151.401, Finance Code, is amended to
17 read as follows:

18 Sec. 151.401. LIABILITY OF LICENSE HOLDER. A money
19 transmission license holder is liable for the payment of all money
20 or monetary value received for transmission [~~either~~] directly or by
21 [~~through~~] an authorized delegate appointed in accordance with
22 Section 151.402.

23 SECTION 13. Sections 151.402(e) and (f), Finance Code, are
24 amended to read as follows:

25 (e) A license holder must notify the license holder's
26 authorized delegates and require the delegates to take any action
27 required by the commissioner if [~~the license holder~~]:

1 (1) the license holder's license expired or is
2 surrendered or revoked [~~fails to renew the license holder's~~
3 ~~license~~]; or

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

7 (f) A license holder must maintain a current list of
8 authorized delegates located in this state or doing business with
9 persons located in this state that includes the name and business
10 address of each delegate and must provide the list to the
11 commissioner on request. A license holder that engages in business
12 through 11 or more authorized delegates located in this state must
13 include on the license holder's website a list of the names and
14 addresses of the authorized delegates of the license holder located
15 in this state and the delegates' business addresses. The license
16 holder must update the list quarterly.

17 SECTION 14. Section 151.501(b), Finance Code, is amended by
18 amending Subdivision (2) and adding Subdivision (3) to read as
19 follows:

20 (2) "Currency exchange" means:
21 (A) receiving [~~exchanging~~]
22 government and exchanging it for the currency of another
23 government; or

24 (B) receiving a negotiable instrument and
25 exchanging it for the currency of another government.

26 (3) "Negotiable instrument" has the meaning assigned
27 by Section 3.104, Business & Commerce Code.

1 SECTION 15. Sections 151.603(a), (b), and (c), Finance
2 Code, are amended to read as follows:

3 (a) An applicant or license holder shall file a written
4 report with the commissioner not later than the 15th day after the
5 date the applicant or license holder knows or has reason to know of
6 a material change in the information reported in an application or
7 annual [renewal] report required under Section 151.207(b)(2). The
8 report must describe the change and the anticipated impact of the
9 change on the activities of the applicant or license holder in this
10 state.

11 (b) A money transmission license holder shall prepare
12 written reports and statements as follows:

13 (1) the annual [renewal] report required by Section
14 151.207(b)(2), including an audited unconsolidated financial
15 statement that is dated as of the last day of the license holder's
16 fiscal year that ended in the immediately preceding calendar year;

17 (2) a quarterly interim financial statement and report
18 regarding the permissible investments required to be maintained
19 under Section 151.309 that reflect the license holder's financial
20 condition and permissible investments as of the last day of the
21 calendar quarter to which the statement and report relate and that
22 are prepared not later than the 45th day after the last day of the
23 calendar quarter; and

24 (3) any other report required by rule of the
25 commission or reasonably requested by the commissioner to determine
26 compliance with this chapter.

27 (c) A currency exchange license holder shall prepare a

1 written report or statement as follows:

2 (1) the annual [~~renewal~~] report required by Section
3 151.207(b)(2), including a financial statement that may be audited
4 or unaudited and that is dated as of the last day of the license
5 holder's fiscal year that ended in the immediately preceding
6 calendar year;

7 (2) a quarterly interim financial statement and
8 transaction report that reflects the license holder's financial
9 condition and currency exchange business as of the last day of the
10 calendar quarter to which the statement and report relate and that
11 are prepared not later than the 45th day after the last day of the
12 calendar quarter; and

13 (3) any other report required by rule of the
14 commission or reasonably requested by the commissioner to determine
15 compliance with this chapter.

16 SECTION 16. Section 151.604(a), Finance Code, is amended to
17 read as follows:

18 (a) A license holder shall file a written report with the
19 commissioner not later than the 15th day after the date the license
20 holder knows or has reason to know of a material change in the
21 information reported in an application or annual [~~renewal~~]
22 required under Section 151.207(b)(2). The report must describe
23 the change and the anticipated impact of the change on the license
24 holder's activities in this state.

25 SECTION 17. Section 278.001(1), Finance Code, is amended to
26 read as follows:

27 (1) "Currency" has the meaning assigned by Section

1 151.501 [~~153.001~~].

2 SECTION 18. Section 278.053, Finance Code, is repealed.

3 SECTION 19. As soon as practicable after the effective date
4 of this Act, the Finance Commission of Texas shall adopt rules
5 necessary to implement the changes in law made by this Act.

6 SECTION 20. Section 151.104(a), Finance Code, as amended by
7 this Act, applies only to an investigation commenced on or after the
8 effective date of this Act. An investigation commenced before the
9 effective date of this Act is governed by the law in effect on the
10 date the investigation was commenced, and the former law is
11 continued in effect for that purpose.

12 SECTION 21. This Act takes effect September 1, 2013.