

By: Burrows

H.B. No. 3233

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), Finance Code, is amended by adding Subdivision (20-a) to read as follows:

(20-a) "Tangible net worth" means the total value of all assets, minus any liabilities and intangible assets.

SECTION 2. Section 151.003, Finance Code, as amended by Chapters 1000 (H.B. 483) and 75 (S.B. 899), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

Sec. 151.003. EXCLUSIONS. Subject to Subchapter J, the following persons are not required to be licensed under this chapter:

(1) the United States or an instrumentality of the United States, including the United States Post Office or a contractor acting on behalf of the United States Post Office;

(2) a state or an agency, political subdivision, or other instrumentality of a state;

(3) a federally insured financial institution, as that term is defined by Section 201.101, that is organized under the laws of this state, another state, or the United States;

(4) a foreign bank branch or agency in the United States established under the federal International Banking Act of

1 1978 (12 U.S.C. Section 3101 et seq.);

2 (5) a person acting as an agent for an entity excluded
3 under Subdivision (3) or (4), to the extent of the person's actions
4 in that capacity, provided that:

5 (A) the entity is liable for satisfying the money
6 services obligation owed to the purchaser on the person's receipt
7 of the purchaser's money; and

8 (B) the entity and person enter into a written
9 contract that appoints the person as the entity's agent and the
10 person acts only within the scope of authority conferred by the
11 contract;

12 (6) a person that, on behalf of the United States or a
13 department, agency, or instrumentality of the United States, or a
14 state or county, city, or any other governmental agency or
15 political subdivision of a state, provides electronic funds
16 transfer services of governmental benefits for a federal, state,
17 county, or local governmental agency;

18 (7) a person that acts as an intermediary on behalf of
19 and at the direction of a license holder in the process by which the
20 license holder, after receiving money or monetary value from a
21 purchaser, either directly or through an authorized delegate,
22 transmits the money or monetary value to the purchaser's designated
23 recipient, provided that the license holder is liable for
24 satisfying the obligation owed to the purchaser;

25 (8) an attorney or title company that in connection
26 with a real property transaction receives and disburses domestic
27 currency or issues an escrow or trust fund check only on behalf of a

1 party to the transaction;

2 (9) a person engaged in the business of currency
3 transportation who is both a registered motor carrier under Chapter
4 643, Transportation Code, and a licensed armored car company or
5 courier company under Chapter 1702, Occupations Code, provided that
6 the person:

7 (A) only transports currency [~~from a person to~~]:

8 (i) from a person to the same person at
9 another location; [~~or~~]

10 (ii) from a person to a financial
11 institution to be deposited in an account belonging to the same
12 person; or

13 (iii) to a person from a financial
14 institution after being withdrawn from an account belonging to the
15 same person; and

16 (B) does not otherwise engage in the money
17 transmission or currency exchange business or depository agent
18 services business without a license issued under this chapter;

19 (9-a) a trust company, as defined by Section
20 187.001(a), that is organized under the laws of this state; and

21 (10) any other person, transaction, or class of
22 persons or transactions exempted by commission rule or any other
23 person or transaction exempted by the commissioner's order on a
24 finding that the licensing of the person is not necessary to achieve
25 the purposes of this chapter.

26 SECTION 3. The heading to Section 151.2031, Finance Code,
27 is amended to read as follows:

1 Sec. 151.2031. USE OF NATIONWIDE MULTISTATE [~~MORTGAGE~~]
2 LICENSING SYSTEM AND REGISTRY.

3 SECTION 4. Sections 151.2031(a) and (b), Finance Code, are
4 amended to read as follows:

5 (a) In this section, "Nationwide Multistate [~~Mortgage~~]
6 Licensing System and Registry" or "nationwide registry" means a
7 licensing system developed and maintained by the Conference of
8 State Bank Supervisors or an affiliated organization to manage
9 mortgage licenses and other financial services licenses, or a
10 successor registry.

11 (b) The commissioner may require that a person submit
12 through the Nationwide Multistate [~~Mortgage~~] Licensing System and
13 Registry in the form and manner prescribed by the commissioner and
14 acceptable to the registry any information or document or payment
15 of a fee required to be submitted under this chapter or rules
16 adopted under this chapter.

17 SECTION 5. Section 151.302(c), Finance Code, is amended to
18 read as follows:

19 (c) On application and a finding that the exemption is in
20 the public interest, the commissioner may exempt a person that:

21 (1) incidentally engages in the money transmission
22 business only to the extent reasonable and necessary to accomplish
23 a primary business objective unrelated to the money transmission
24 business;

25 (2) does not advertise or offer money transmission
26 services to the public except to the extent reasonable and
27 necessary to fairly advertise or offer the person's primary

1 business services; and

2 (3) [~~either transmits money exclusively in connection~~
3 ~~with commercial contracts in interstate commerce or does not charge~~
4 ~~a fee to transmit money or~~] transmits money without a fee as an
5 inducement for customer participation in the person's primary
6 business.

7 SECTION 6. Section 151.304(b), Finance Code, is amended to
8 read as follows:

9 (b) At the time an application for a money transmission
10 license is submitted, an applicant must file with the department:

11 (1) an application fee in the amount established by
12 commission rule;

13 (2) audited financial statements that are
14 satisfactory to the commissioner for purposes of determining
15 whether the applicant has the minimum net worth required under
16 Section 151.307 and is likely to maintain the required minimum net
17 worth if a license is issued; and

18 (3) security [~~in the amount of \$300,000,~~] that meets
19 the requirements of Section 151.308, and an undertaking or
20 agreement that the applicant will increase or supplement the
21 security to equal the aggregate security required by the
22 commissioner under that section before the issuance of the license
23 and the start of operations.

24 SECTION 7. Section 151.307, Finance Code, is amended by
25 amending Subsection (a) and adding Subsection (c) to read as
26 follows:

27 (a) An applicant for a money transmission license must

1 possess, and a money transmission license holder must maintain at
2 all times, a minimum net worth computed in accordance with
3 generally accepted accounting principles of:

4 (1) \$100,000, if business is proposed to be or is
5 conducted, directly or through an authorized delegate, at four or
6 fewer locations; or

7 (2) \$500,000, if business is proposed to be or is
8 conducted, directly or through an authorized delegate, at five or
9 more locations or over the Internet.

10 (c) At least 50 percent of the applicant's or license
11 holder's total net worth under this section must be tangible net
12 worth.

13 SECTION 8. Section [151.308](#), Finance Code, is amended by
14 amending Subsection (b) and adding Subsections (b-1) and (b-2) to
15 read as follows:

16 (b) The amount of the required security is the greater of
17 \$300,000 or an amount equal to one percent of the license holder's
18 total yearly dollar volume of money transmission business in this
19 state or the applicant's projected total volume of business in this
20 state for the first year of licensure, up to a maximum of \$2
21 million.

22 (b-1) The commissioner may increase the amount of security
23 required of an applicant who intends to provide, or a license holder
24 who is providing, third-party bill payments in conjunction with
25 loan acceleration services, up to a total amount of \$2 million, by
26 multiplying the amount of security required by a factor of up to
27 two, if the commissioner determines, with respect to the applicant

1 or license holder, that a higher amount of the required security is
2 necessary to achieve the purposes of this chapter based on the
3 factors listed under Section 151.307(b).

4 (b-2) When the amount of the required security exceeds \$1
5 million, the applicant or license holder may, in the alternative,
6 provide security in the amount of \$1 million, plus a dollar for
7 dollar increase in the net worth of the applicant or license holder
8 over the amount required under Section 151.307, up to a total amount
9 of \$2 million.

10 SECTION 9. Section 151.702, Finance Code, is amended to
11 read as follows:

12 Sec. 151.702. CEASE AND DESIST ORDER FOR UNLICENSED
13 PERSONS. (a) If the commissioner has reason to believe that an
14 unlicensed person has engaged or is likely to engage in an activity
15 for which a license is required under this chapter, the
16 commissioner may order the person to cease and desist from the
17 violation until the person is issued a license under this chapter.
18 The commissioner's order is subject to Section 151.709, unless the
19 order is issued as an emergency order. The commissioner may issue
20 an emergency cease and desist order in accordance with Section
21 151.710 if the commissioner finds that the person's violation or
22 likely violation threatens immediate and irreparable harm to the
23 public.

24 (b) A cease and desist order under this section may require
25 the unlicensed person to take affirmative action to correct any
26 condition resulting from or contributing to the action or
27 violation, including the payment of restitution to each resident of

1 this state damaged by the violation.

2 SECTION 10. The heading to Section 151.705, Finance Code,
3 is amended to read as follows:

4 Sec. 151.705. CEASE AND DESIST ORDERS FOR LICENSE HOLDERS
5 OR AUTHORIZED DELEGATES.

6 SECTION 11. Section 151.705(b), Finance Code, is amended to
7 read as follows:

8 (b) A cease and desist order may require a license holder or
9 authorized delegate to cease and desist from the action or
10 violation and ~~[or]~~ to take affirmative action to correct any
11 condition resulting from or contributing to the action or
12 violation, including the payment of restitution to each resident of
13 this state damaged by the violation, and the requirements of the
14 order may apply to a principal or responsible person of the license
15 holder or authorized delegate.

16 SECTION 12. Section 151.707(d), Finance Code, is amended to
17 read as follows:

18 (d) In determining the amount of the penalty, the
19 commissioner shall consider factors that include the seriousness of
20 the violation, the person's compliance history, and the person's
21 good faith in attempting to comply with this chapter, provided that
22 if the person is found to have demonstrated wilful disregard under
23 Subsection (a)(4), the trier of fact may ~~[shall]~~ recommend that the
24 commissioner impose the maximum administrative penalty permitted
25 under Subsection (c).

26 SECTION 13. (a) Sections 151.302, 151.304, 151.307, and
27 151.308, Finance Code, as amended by this Act, apply only to an

1 application for a money transmission license submitted on or after
2 the effective date of this Act. An application for a license
3 submitted before the effective date of this Act is governed by the
4 law in effect on the date the application was submitted, and the
5 former law is continued in effect for that purpose.

6 (b) Not later than September 1, 2022, a person holding a
7 money transmission license on September 1, 2017, shall comply with
8 the net worth requirements of Section 151.307, Finance Code, as
9 amended by this Act. On written application and for good cause
10 shown, the banking commissioner of Texas may extend the period for
11 compliance under this section for the money transmission license
12 holder.

13 (c) Not later than July 1, 2018, a person holding a money
14 transmission license on September 1, 2017, shall comply with the
15 security requirements of Section 151.308, Finance Code, as amended
16 by this Act.

17 (d) Sections 151.702, 151.705, and 151.707, Finance Code,
18 as amended by this Act, apply only to a violation that occurs on or
19 after the effective date of this Act. A violation that occurs
20 before that date is governed by the law in effect immediately before
21 the effective date of this Act, and that law is continued in effect
22 for that purpose.

23 SECTION 14. This Act takes effect September 1, 2017.