

BILL ANALYSIS

S.B. 895
By: Johnson
Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Money transmission is currently regulated by statutes that vary widely among the different states, and the industry has voiced concerns about the need to comply with so many different requirements. Additionally, the current Texas statutes regulating money transmission were originally adopted in 2005, but the business of money transmission has significantly changed and expanded since that time. S.B. 895 seeks to update and streamline regulations to better accommodate the increasing number of money transmitters operating within Texas and nationwide by providing a clear set of standards that can be implemented by Texas agencies in a consistent and coordinated manner for domestic and international money transmitters.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 1.01 and 4.01 of this bill.

ANALYSIS

S.B. 895 amends the Finance Code to modernize the regulation of money services businesses. The bill repeals the Money Services Act and replaces the act with the Money Services Modernization Act to protect the interests of money services purchasers and the public, preserve and protect the safety and soundness of money services businesses, and protect against drug trafficking, terrorist funding, and money laundering, structuring, or related financial crimes. The bill includes money transmission services and currency exchange services in the definition of money services, and provides for the licensing and regulation of both such types of money services. The bill expressly does not authorize the creation of any centralized bank digital currency or any other action that prohibits or limits the use of paper currency.

Administrative and Implementation Provisions

S.B. 895 requires the Texas Department of Banking to administer the bill and authorizes the Finance Commission of Texas to adopt rules to administer and enforce the bill in substantially the same manner as provided in the provisions repealed by the bill. The bill authorizes the banking commissioner of Texas, or a person designated by the commissioner and acting under the commissioner's direction and authority, to do the following:

- enter into agreements or relationships with government officials, federal and state regulatory agencies, and regulatory associations to improve efficiencies and reduce

regulatory burden by standardizing methods or procedures and sharing resources, records, or related information obtained under the bill;

- use, hire, contract for, or employ analytical systems, methods, or software to examine or investigate a person subject to the bill;
- accept licensing, examination, or investigation reports made by other state or federal government agencies or officials; and
- accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or money services licensee and incorporate the audit report in a report of examination or investigation.

The bill additionally provides for the commissioner's general authority under the bill's provisions and other law.

S.B. 895 makes confidential and exempts from state public information law the following information:

- all information or reports obtained by the commissioner from an applicant, money services licensee, or authorized delegate;
- all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the commissioner; and
- financial statements, balance sheets, or authorized delegate information.

An "authorized delegate," for purposes of the bill, is a person designated by a money transmission licensee to engage in money transmission services on behalf of the licensee. The bill establishes the circumstances under which and the persons to whom the commissioner may disclose information not otherwise subject to disclosure under the bill and clarifies that the bill does not prohibit the commissioner from disclosing to the public a list of all money services licensees or the aggregated financial or transactional data concerning those licensees. The bill specifies the information for each money services licensee contained in the department's records that is not confidential and may be made available to the public in its entirety on the department's website or in the nationwide multistate licensing system and registry (NMLS), or in response to a written request for the information received by the department.

S.B. 895 provides for the commissioner's authority regarding conducting investigations in or outside Texas and the United States as the commissioner considers necessary or appropriate to administer or enforce the bill in substantially the same manner as in provisions repealed by the bill. The bill sets out provisions relating to the commissioner's authority to conduct examinations and investigations of a money services licensee or authorized delegate or take other action under the bill or a related rule or order as reasonably necessary or appropriate to administer and enforce the bill and any other applicable law. The bill requires a money services licensee or authorized delegate to provide records reasonably requested by the commissioner for examination, at the location and in the format specified by the commissioner, and to pay all costs reasonably incurred in connection with the examination. The bill additionally sets out provisions relating to the commissioner's participation in multistate supervisory processes established between states to share certain information regarding money services licensees that hold licenses in Texas and other states, including provisions prohibiting the commissioner from waiving the commissioner's authority under the bill with respect to examinations, investigations, or other authorized action. A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in the bill.

S.B. 895 establishes the relationship between its provisions and federal law governing money transmission with regard to any inconsistency between the bill and that federal law. The bill establishes, in the same manner as provisions repealed by the bill, that a money services licensee, an authorized delegate, or a person who knowingly engages in activities that are regulated and require such a license is considered to have consented to the jurisdiction of Texas courts for all actions arising under the bill. The bill additionally establishes that a person is presumed to exercise a controlling influence over a money services licensee if the person holds the power to directly or indirectly vote not less than 10 percent of the outstanding voting shares or voting interests of a money services licensee or person in control of such a licensee. This presumption

may be rebutted by evidence that the person who is presumed to exercise a controlling influence is a passive investor. The bill specifies the method for determining the percentage of a money services licensee controlled by a person for the bill's purposes.

Money Services Licenses

S.B. 895 prohibits a person, defined by the bill as an individual or a corporate entity identified by the commissioner, from engaging in the business of money transmission or the business of currency exchange or from advertising, soliciting, or holding itself out as doing so unless the person is licensed under the bill to do so. The bill establishes that a person engages in the money transmission business or the currency exchange business if the person receives or expects to receive compensation, directly or indirectly, for conducting money transmission or exchanging currency, respectively. The bill defines the following terms with respect to the scope of a money transmission license:

- "money transmission" means selling or issuing payment instruments or stored value to, or receiving money or monetary value for transmission services from, a person physically located in Texas for a transaction requested in person and, for a transaction requested electronically or by phone, a determination based on certain information that the person requesting the transaction is in Texas;
- "money" or "monetary value" means currency or a claim that can be converted into currency through a financial institution, electronic payments network, or other formal or informal payment system, including stablecoin that is pegged to a sovereign currency, is fully backed by assets held in reserve, and grants a holder of the stablecoin the right to redeem the stablecoin for sovereign currency from the issuer;
- "payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not the instrument is negotiable, and does not include stored value, an instrument redeemable only for certain goods or services, or an instrument issued and distributed as part of a loyalty, rewards, or promotional program; and
- "stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services, including prepaid access as defined by federal regulations, but does not include a payment instrument, closed-loop stored value, or stored value issued and distributed as part of a loyalty, rewards, or promotional program.

The bill defines the following terms with respect to a currency exchange license:

- "currency" means the coin and paper money issued by a country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance; and
- "currency exchange" means receiving the currency of one government or a negotiable instrument and exchanging it for another government's currency.

A money transmission license and a currency exchange license are not transferable or assignable.

S.B. 895 establishes that its licensing requirements do not apply to the following:

- an operator of a payment system to the extent that the operator provides processing, clearing, or settlement services, between or among persons exempted by this section or money services licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers;
- a person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission services, provided to the payor by the payee, provided that:
 - there exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

- the payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and
- payment for the goods and services is treated as received by the payee on receipt by the agent, the payor's obligation is extinguished, and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;
- a person who acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity that has incurred the outstanding money transmission obligation:
 - is licensed or exempt from the licensing requirements of this chapter;
 - provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and
 - bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with a failure to transmit the funds to the sender's designated recipient;
- the United States or a department, agency, or instrumentality of the United States, or an agent of a department, agency, or instrumentality of the United States;
- money transmission services by the U.S. Postal Service or by an agent of the service;
- a state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent;
- a federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch under the federal International Banking Act of 1978, a corporation organized under the federal Bank Service Company Act, or a corporation organized under the federal Edge Act;
- a person expressly appointed as a third-party service provider to or agent of an entity exempt under the preceding bulleted item, solely to the extent that:
 - the service provider or agent engages in money transmission services on behalf of and under a written agreement with the exempt entity that provides the specific functions that the service provider or agent is to perform; and
 - the exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations on receipt of the purchaser's or holder's money or monetary value by the service provider or agent;
- a trust company, as defined by the Texas Trust Company Act, that is organized under state law;
- an attorney or title company that in connection with a real property transaction receives and disburses domestic currency or issues an escrow or trust fund check only on behalf of a party to the transaction;
- an electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States, or on behalf of a state or governmental subdivision, agency, or instrumentality of a state;
- a board of trade designated as a contract market under the federal Commodity Exchange Act or a person who, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board of trade;
- a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;
- a person registered as a securities broker-dealer under federal or state securities laws to the extent of the person's operation as a broker-dealer;
- an individual employed by a money services licensee, authorized delegate, or person exempted from the licensing requirements of the bill's provisions when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor; and

- a person exempt by a regulation or order of the commissioner finding that:
 - the exemption is in the public interest; and
 - the regulation of the person is not necessary for the purposes of the bill's provisions.

The bill authorizes the commissioner to require a person claiming to be exempt from licensing to provide information and documentation demonstrating that the person qualifies for the exemption claimed. On receiving a license application and finding that the exemption is in the public interest, the commissioner may exempt the following persons from the applicable licensing requirements:

- for a money transmission license, a person who takes certain action related to the money transmission business only for the purpose of engaging in the person's primary business; and
- for a currency exchange license, a retailer, wholesaler, or service provider that in the ordinary course of business accepts currency of a foreign country or government as payment for goods or services, subject to certain limitations specified by the bill.

The commissioner may examine a person to verify the person's exempt status based on those exemption reasons. The bill authorizes a currency exchange licensee to engage in the currency exchange business at one or more locations in Texas directly or indirectly owned by the licensee under a single license.

S.B. 895 requires an applicant for a money services license to apply in a form and medium prescribed by the commissioner and requires such a form to contain content as provided by commission rule or the commissioner's instruction or procedure. The commissioner may update the form in accordance with applicable law in order to carry out the bill's purposes and maintain consistency with NMLS licensing standards and practices. The bill prescribes the information the application must contain and the additional information that must be provided by an applicant that is a corporation, limited liability company, partnership, or other legal entity. The bill authorizes the commissioner to waive one or more such application requirements or permit an applicant to submit other information in lieu of the prescribed information and requires a license applicant to file with the department at the time of application a nonrefundable application fee in the amount established by commission rule.

S.B. 895 sets out additional information requirements applicable to an individual who is in control of a money services licensee or applicant, who seeks to acquire control of a money services licensee, or who is a key individual, defined by the bill as an individual who is ultimately responsible for establishing or directing the policies and procedures of a money services licensee, including an executive officer, manager, director, or trustee. This additional information must include the following with respect to an individual subject to the requirements:

- fingerprints for submission to the FBI and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the 10-year period preceding the submission of the application; and
- personal history and experience, in a form and medium prescribed by the commissioner, that contains an independent credit report for an individual with a social security number, information related to any criminal convictions or pending charges against the individual, and information related to any regulatory or administrative action and any civil litigation against the individual involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

An individual who is subject to these additional information requirements and who has resided outside of the United States at any time in the preceding 10 years must also provide an investigative background report prepared by an independent search firm that meets the bill's minimum specified requirements.

S.B. 895, with regard to the issuance of a money services license:

- establishes that an application appearing to include all required items and address all required matters is considered complete and clarifies that the commissioner's

determination of completeness and acceptance for processing is not an assessment of the application's substance;

- requires the commissioner to promptly notify the applicant in writing of the date on which the application is determined complete and to approve or deny the application not later than the 120th day after that date;
- if the commissioner does not approve or deny the application within that period, provides for the application approval and effective license date and authorizes the commissioner to extend the application approval period for good cause;
- requires the commissioner to investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness;
- authorizes the commissioner to conduct an on-site investigation of the applicant with reasonable costs payable by the applicant;
- requires the commissioner to issue a license to an applicant if the commissioner finds the applicant has complied with the applicable application and information requirements and that it is in the interest of the public to permit the applicant to engage in money transmission, currency exchange, or both, considering certain financial, business, and personal qualities, as applicable, of the applicant or a key individual or person in control of the applicant;
- for an applicant who participates in or is otherwise subject to a multistate licensing process, provides for the commissioner's authority to investigate the applicant or accept the investigation results of another state; and
- establishes the license term takes effect on the day the application is approved.

The bill requires an applicant for a money transmission license or a currency exchange license to demonstrate that it meets or will meet all bill requirements relating to securities, investments, and other financial requirements, as applicable, and requires a licensee to continue to meet those requirements at all times.

S.B. 895 sets out provisions relating to the following with regard to money services licenses that are substantially the same as provisions repealed by the bill:

- the use of the NMLS for obtaining certain applicant information or fee payments;
- the commissioner's duty to provide notice of a license denial for an applicant who does not meet the requisite qualifications or satisfy the requirements for the license and the process for requesting a hearing to appeal the denial;
- the commissioner's authority to suspend or revoke the license of a license holder who does not continue to meet the qualifications or satisfy the provisions relating to the license holder's duty to annually pay a license fee and submit a report containing certain financial information;
- surrendering a license and filing a new license application for an expired or surrendered license; and
- the nonrefundable nature of a fee or cost paid by a licensee under the bill.

Acquisition of Control and Change of Key Individual

S.B. 895 requires a person or group of persons acting in concert seeking to acquire control of a money services licensee to obtain the written approval from the commissioner before acquiring control. The bill defines "control" as the power to directly or indirectly vote at least 25 percent of the outstanding voting shares or voting interests of a money services licensee or person in control of a licensee, the power to elect or appoint a majority of key individuals or other persons exercising managerial authority of a person in control of a licensee, or the power to directly or indirectly exercise a controlling influence over the management or policies of a licensee or person in control of a money services license. The bill provides the following with respect to an application to acquire control of a money services licensee:

- requires the person or group, in cooperation with the licensee, to submit an application in a form and medium prescribed by the commissioner and to submit a nonrefundable fee in the amount established by commission rule;

- authorizes the commissioner, on request, to permit the licensee, person, or group to submit some or all of the required information without using the NMLS;
- requires the application to include, from the bill's information requirements for certain individuals, information for any new key individual that has not previously completed those requirements;
- establishes that an application is considered complete when it appears to include all required items and address all required matters and further clarifies that the commissioner's determination of completeness and acceptance for processing is not an assessment of the application's substance;
- requires the commissioner to promptly notify the applicant in writing of the date on which the application is determined complete and to approve or deny the application not later than the 60th day after that date;
- if the application is not approved or denied before the 61st day after the completion date, provides for the application's approval and acquisition of control and authorizes the commissioner to extend the application period for good cause;
- requires the commissioner to investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person or group seeking to acquire control;
- requires the commissioner to approve the acquisition of control if the commissioner finds that the applicable application, fee, and information requirements have been met and that it is in the interest of the public to permit the person or group to control the money services licensee considering certain financial, business, and personal qualities, as applicable, of the person or group seeking to acquire control or of the key individuals and persons that would be in control of the licensee after the acquisition of control;
- for an applicant who participates in or is otherwise subject to a multistate licensing process, provides for the commissioner's authority to investigate an applicant or accept the investigation results of another state; and
- requires the commissioner to inform the licensee and the proposed person in control in writing if the application is denied, along with the reasons for denial, and establishes the process for requesting a hearing to appeal the denial.

The bill establishes exceptions to the applicability of its approval and application requirements with respect to an acquisition of control, but the bill requires certain of those persons specified by the bill to notify the commissioner of the person's grounds for not complying with the approval and application requirements not later than the 15th day after the date of the acquisition of control. Subject to specified conditions, the bill additionally makes those approval and application requirements inapplicable to a person who has complied with and received approval to engage in money services or was identified as a person in control in a previous application approved by the commissioner or by a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision under a multistate licensing process. The bill establishes that an individual is not considered to acquire control of a money services licensee and is not subject to the bill's acquisition of control provisions if that individual becomes a key individual in the ordinary course of business.

S.B. 895 authorizes a person, before filing an application for an approval to acquire control, to request in writing a determination from the commissioner as to whether the person would be considered a person in control of a money services licensee on consummation of a proposed transaction and exempts a person not considered as such from the approval and application requirements. With respect to an applicant who participates in or is otherwise subject to a multistate licensing process that includes such a control determination, the bill provides for the commissioner's authority to investigate the applicant or accept the investigation results of another state.

S.B. 895 sets out the following provisions regarding notice and information requirements for a change of key individuals:

- requires a money services licensee adding or replacing a key individual to provide notice to the commissioner not later than the 15th day after the effective date of the individual's appointment and the information required by the bill for certain individuals not later than the 45th day after that date;
- authorizes the commissioner to issue a notice of disapproval of a key individual based on certain findings regarding the best interest of the public or the customers of the licensee not later than the 90th day after the date on which the notice of change is determined to be complete;
- requires the notice of disapproval to contain a statement of the basis for disapproval and be sent to the licensee and the disapproved individual and provides for the process by which the licensee may request a hearing to appeal the disapproval;
- specifies that the key individual is considered approved if the notice of change is not disapproved before the 91st day after the date on which it was determined to be complete; and
- provides for the commissioner's authority with respect to a licensee who participates in or is otherwise subject to a multistate licensing process that includes a key individual notice review and disapproval process.

Reporting and Records

S.B. 895 sets out provisions relating to a money transmission licensee's reporting requirements as follows:

- requires the licensee to submit a report of condition not later than the 45th day after the end of the calendar quarter, or within an extended time as the commissioner may prescribe;
- requires that report to include the licensee's financial information; nationwide and state-specific money transmission services transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission; a report on the licensee's permissible investments; for a fourth quarter report, transaction destination country reporting for money received for transmission; and any other information the commissioner reasonably requires with respect to the licensee;
- authorizes the commissioner to use the NMLS for the submission of such a report and to change or update the report requirements as necessary to carry out the bill's purposes and maintain consistency with NMLS reporting;
- requires the licensee to file with the commissioner by a certain deadline an audited unconsolidated financial statement of the licensee for the fiscal year, which must be prepared in accordance with United States generally accepted accounting principles by a certified public accountant who meets certain criteria, and any other information as the commissioner may reasonably require and, with respect to the audited financial statement, provides for additional requirements regarding a certificate of opinion; and
- requires the licensee to submit a report of authorized delegates not later than the 45th day after the end of each calendar quarter containing certain identifying, contact, and designation information for each authorized delegate as specified by the bill and authorizes the commissioner to use the NMLS for the report's submission if NMLS functionality is consistent with that requirement.

S.B. 895 sets out provisions relating to a currency exchange licensee's reporting requirements as follows:

- requires the licensee to submit the annual report containing certain financial information as provided by the bill that includes a financial statement, audited or unaudited, dated as specified by the bill;
- requires the licensee to submit a quarterly interim financial statement and transaction report that reflects the licensee's financial condition and currency exchange services business as of and prepared by a certain date as specified by the bill;

- requires the licensee to submit any other report required by commission rule or reasonably requested by the commissioner to determine compliance with the bill;
- requires the licensee to submit those statements and reports with the commissioner as required by the bill, by commission rule, or as requested by the commissioner;
- authorizes the commissioner to extend the time for preparing or filing such a statement or report on written application and for good cause shown; and
- requires the licensee to file with the commissioner by a certain deadline a financial statement, audited or unaudited, dated as prescribed by the bill and any other information as the commissioner may reasonably require and, for an audited financial statement, provides for additional requirements regarding a certificate of opinion.

S.B. 895 requires a money services licensee to file a report with the commissioner not later than the first business day after the licensee has reason to know of any of the following events:

- the filing of a petition by or against the licensee under federal bankruptcy law for bankruptcy or reorganization;
- the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors; or
- the commencement of a proceeding to revoke or suspend the licensee's license in a state or country in which the licensee engages in or is licensed to engage in money services business.

The bill requires a money services licensee to file a report with the commissioner not later than the third business day after the licensee has reason to know of the occurrence of a felony charge or conviction of the following:

- the licensee or a key individual;
- a person in control of the licensee; or
- an authorized delegate.

S.B. 895 requires a money services licensee and an authorized delegate to file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements provided by the federal Bank Secrecy Act and other federal and state laws relating to money laundering. The timely filing of such a complete and accurate report with the appropriate federal agency is considered compliant with the bill's requirements. The bill requires a money services licensee to maintain the following records, as applicable and in any form, for determining compliance with the bill for at least five years:

- a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
- bank statements and bank reconciliation records;
- for a money transmission licensee:
 - records of outstanding money transmission obligations;
 - records of each outstanding money transmission obligation paid within the five-year period and of each outstanding money transmission obligation sold; and
 - a list of the last known names and addresses of all of the licensee's authorized delegates;
- for a currency exchange licensee, a record of each currency exchange transaction; and
- any other records the commissioner reasonably requires by rule.

The bill specifies that all such records maintained by the licensee are open to examination by the commissioner and authorizes the records to be maintained outside Texas so long as they are made accessible to the commissioner not later than the seventh business day after the commissioner sends notice in writing.

Authorized Delegates

S.B. 895 sets out provisions, as follows, with respect to the relationship between a money transmission licensee and a person the licensee designates as an authorized delegate to engage in money transmission on behalf of the licensee:

- makes the licensee liable for the payment of all money or monetary value received for transmission directly or by an authorized delegate;
- requires the licensee to take the following actions before conducting business through an authorized delegate or before allowing a person to act as such:
 - enter into a written contract that appoints an authorized delegate, is signed by both parties, and contains certain provisions specified by the bill regarding each party's duties, rights, and responsibilities;
 - adopt, and update as necessary, written policies and procedures to ensure the authorized delegate complies with applicable state and federal law; and
 - conduct a reasonable risk-based background investigation to determine whether the authorized delegate has complied and will likely comply with that law;
- requires an authorized delegate to operate in full compliance with the bill;
- establishes notice and operations requirements in the event of the licensee's license being suspended, revoked, surrendered, or expired;
- specifies that an authorized delegate holds in trust for the licensee's benefit all money net of fees received from money transmission and that any funds or property the authorized delegate owns or controls that are comingled with funds the authorized delegate receives from money transmission are considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission; and
- prohibits an authorized delegate from using a subdelegate to conduct money transmission on behalf of a licensee.

S.B. 895 requires a money transmission licensee's name and mailing address or telephone number to be provided to the purchaser in connection with each money transmission transaction conducted by the licensee directly or through an authorized delegate and requires a licensee receiving currency or an instrument payable in currency for transmission to comply with statutory provisions regulating currency transmissions.

S.B. 895 prohibits a person from engaging in money transmission business on behalf of a person not licensed or exempt from licensure under the bill's provisions. The bill establishes that a person who engages in unauthorized activity provides money transmission to the same extent as if the person were a money transmission licensee and makes the person jointly and severally liable with the unlicensed or nonexempt person. Any business for which a license is required by the bill that is conducted by an authorized delegate outside the scope of authority conferred in the contract between the authorized delegate and the licensee is unlicensed activity.

Timely Transmission, Refunds, and Disclosures by Money Transmission Licensee

S.B. 895 requires a money transmission licensee to forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur. If the licensee fails to do so, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

S.B. 895 requires a money transmission licensee to refund any and all money received for money transmission services to the sender not later than the 10th day after the date of receipt of the sender's written request for a refund unless:

- the money has been forwarded not later than the 10th day after the date on which the money was received for transmission;
- instructions have been given committing an equivalent amount of money to the person designated by the sender not later than the 10th day after that date;
- the agreement between the licensee and the sender instructs the licensee to forward the money at a time that is later than the 10th day after that date;
- the refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or
- the refund request does not enable the licensee to identify the sender's name and address or telephone number or, if the sender has multiple outstanding transactions, the particular transaction to be refunded.

These refund provisions do not apply to money received for money transmission that is subject to federal regulations regarding requirements for remittance transfers or that is under a written agreement between the licensee and a payee to process payments for goods or services provided by the payee. The bill requires a licensee who, under an agreement with the sender, has not yet forwarded funds in accordance with the agreement's terms to issue a refund in accordance with other provisions of the bill.

S.B. 895 requires a money transmission licensee or authorized delegate to provide the sender a receipt for money received for money transmission services that meets certain form, information, and language requirements specified by the bill. For in-person transactions, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt and, for transactions conducted electronically or by phone, a receipt may be provided electronically. These receipt provisions do not apply to the following:

- money received for transmission subject to federal regulations regarding requirements for remittance transfers;
- money received for transmission that is not primarily for personal, family, or household purposes;
- money received for transmission under a written agreement between the licensee and a payee to process payments for goods or services provided by the payee; or
- payroll processing services.

The bill requires a money transmission licensee that provides payroll processing services to issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account and to make available worker pay stubs or an equivalent statement to workers. These requirements do not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing paystubs or an equivalent statement.

Prudential Standards

S.B. 895 requires a money transmission licensee to maintain at all times a tangible net worth in an amount that is not less than the following:

- for a licensee with total assets in an amount not greater than \$100 million, the greater of \$100,000 or three percent of the value of the licensee's total assets;
- for a licensee with total assets in an amount greater than \$100 million and not greater than \$1 billion, the sum of \$3 million and two percent of the additional assets in excess of \$100 million; and
- for a licensee with total assets in an amount greater than \$1 billion, the sum of \$21 million and one-half of one percent of the additional assets in excess of \$1 billion.

Tangible net worth must be demonstrated by the most recent audited or unaudited financial statements provided in the initial money transmission license application of an applicant that is a corporation, limited liability company, partnership, or other legal entity. The bill authorizes the commissioner to wholly or partially exempt a money transmission licensee from these net worth requirements for good cause shown.

S.B. 895 sets out the following security provisions applicable to a money transmission licensee:

- requires the licensee at all times to maintain security consisting of a surety bond in a form satisfactory to the commissioner;
- authorizes the licensee to maintain a deposit in lieu of a bond with the commissioner's approval;
- provides a method for determining the amount of the required security based on the licensee's net worth and amount of assets;
- establishes that a licensee that maintains a bond in the maximum amount calculated under the bill may not be required to calculate the licensee's average daily money transmission liability in Texas for purposes of these security provisions; and
- authorizes the licensee to exceed the maximum required bond amount as provided under the bill's permissible investment provisions.

S.B. 895 sets out the following security provisions applicable to a currency exchange licensee:

- requires the licensee to at all times maintain security in one of the following amounts, as applicable:
 - for a licensee who conducts business with persons located in Texas exclusively at one or more physical locations through in-person contemporaneous transactions, \$2,500; and
 - for a licensee to whom that security amount does not apply, a minimum amount that equals the greater of \$2,500 or an amount equal to one percent of the licensee's total dollar volume of currency exchange business in Texas for the preceding year;
- sets the maximum security amount that may be required under these provisions at \$1 million;
- subjects the security to the bill's provisions relating to additional security requirements; and
- authorizes an applicant for a currency exchange license, for purposes of demonstrating prospective compliance with the security requirements in the application, to use the applicant's projected total dollar volume of currency exchange business in Texas for the first year of licensure to determine the applicant's required security amount.

S.B. 895 requires a security under the bill to be in a form satisfactory to the commissioner and specifies that the money services license to which the requirement that a security be payable to any claimant or to the commissioner for any liability arising out of state-regulated money service business is a money transmission license. The bill sets out provisions establishing additional security requirements for money services licensees that are substantially the same as the security provisions repealed by the bill relating to the following:

- the entities authorized to issue a security in the form of a bond or an irrevocable letter of credit;
- the process for a claimant or the commissioner to bring suit on a security;
- the commissioner's collection of delinquent fees, assessments, costs, penalties, or other amount imposed on and owed by a licensee from a security or security proceeds and related notice of hearing requirements;
- the duration a security remains in effect and the cancellation of a security;
- the amount of time a security must cover claims after a money services license is surrendered or the licensee ceases engaging in activities for which the license is required;
- the commissioner's duty to require additional security on a determination that the provided security is insecure, deficient in amount, or exhausted in whole or in part;
- the authorization for a money services license applicant or licensee to deposit an aggregate amount of U.S. currency, certificates of deposit, or other cash equivalents that equals the total amount of the required security or the remaining part of the security as an alternative to providing all such amount in a security; and

- establishing that a security is considered to be held in trust for the benefit of the state and any individual to whom an obligation arising under the bill is owed and prohibiting the security from being considered the licensee's asset or property in the event of bankruptcy, receivership, or a claim against the licensee unrelated to the licensee's obligations pursuant to the license.

S.B. 895 sets out the following provisions with regard to a money transmission licensee's permissible investments:

- requires the licensee to maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations;
- provides for the commissioner's authority to limit the extent to which a specific investment made by the licensee within a class of permissible investments may be considered a permissible investment;
- establishes that permissible investments are held in trust for the benefit of the purchasers and holders of the money transmission licensee's outstanding money transmission obligations in the event of certain circumstances specified by the bill;
- establishes that a permissible investment impressed with a trust is not subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of the trust;
- sets out notice requirements with respect to the establishment of a trust or when any funds are drawn on a letter of credit;
- establishes that such drawn funds and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations are considered held in trust for the benefit of those purchasers and holders on a pro rata and equitable basis;
- requires a trust of permissible investments to be terminated on extinguishment of all of the licensee's outstanding money transmission obligations;
- specifies the types of investments that are considered permissible subject to certain limitations and requirements; and
- authorizes the commissioner to allow other types of investments that are of sufficient liquidity and quality to be a permissible investment and to participate in efforts with other state regulators to make such determinations.

Enforcement and Administrative Provisions

S.B. 895 sets out enforcement provisions that are substantially the same as the provisions repealed by the bill and that relate to the following:

- injunctive relief;
- cease and desist orders for unlicensed persons;
- the suspension and revocation of a money services license;
- the suspension and revocation of an authorized delegate;
- cease and desist orders for a money services licensee or authorized delegate;
- consent orders;
- administrative penalties;
- a criminal penalty;
- notice, hearing, and other procedures for nonemergency orders; and
- requirements and notice and hearing procedures for emergency orders.

Among those repealed provisions included in the bill are provisions that create a third degree felony offense for a person who does the following:

- intentionally makes a false statement, misrepresentation, or certification in a record or application filed with the department or required to be maintained under the bill or a rule adopted or order issued under the bill, or intentionally makes a false entry or omits a material entry in the record or application; or

- knowingly engages in an activity for which a money services license is required under the bill without being licensed under the bill's provisions.

With respect to repealed provisions included in the bill relating to the suspension and revocation of a money services license, the bill adds a provision requiring the commissioner to revoke a license if the commissioner finds that the licensee does not provide the security required by the bill and clarifies that the requirement to revoke the license of a licensee that does not meet applicable net worth requirements applies to a money transmission license. The bill further clarifies that references to an authorized delegate in suspension and revocation provisions both with regard to a money services license and an authorized delegate refer to a money transmission licensee's authorized delegate.

S.B. 895 additionally sets out provisions that are substantially the same as provisions repealed by the bill relating to administrative procedures. Furthermore, the bill provides that, in applying and construing the bill's provisions, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact laws substantially similar to the bill's provisions.

Transitional, Conforming, and Repealed Provisions

S.B. 895 establishes that a license issued under the Money Services Act that is in effect on September 1, 2023, remains in force as a license issued under the bill's provisions but requires a licensee to satisfy the bill's minimum requirements to maintain a license established by the bill not later than September 1, 2024. The bill also establishes that a contract between a licensee and an authorized delegate entered into or renewed on or after the bill's effective date must satisfy the bill's contract requirements. The commission may adopt rules to further provide for the orderly transition to licensing and regulation under the bill.

S.B. 895 amends the Civil Practice and Remedies Code, Code of Criminal Procedure, Labor Code, and Tax Code to make conforming changes.

S.B. 895 repeals Chapter 151, Finance Code.

EFFECTIVE DATE

September 1, 2023.