



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 850

PRINTERS NO. 3932

PRIME SPONSOR: Mackenzie

COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
Banking Fund	\$0	See "Fiscal Impact"

SUMMARY: Updates the Money Transmission Business Licensing Law. This legislation would take effect in 60 days and would not apply to any transaction that occurred prior to the effective date of this legislation.

ANALYSIS: This legislation amends the Money Transmission Licensing Law of 1965 (commonly referred to as the Money Transmitter Act) to modernize the law and update certain licensing provisions.

License Required: The legislation provides that the Act shall not apply to transmissions between business entities in connection with commercial contracts, unless the contracts are for personal or household purposes.

Exemptions: The exemptions from licensure are expanded to include:

- agents of Federal, state or local government agencies to the extent that they are disbursing government benefits; and
- agents that receive payments from individuals on behalf of persons that are creditors, public utilities or providers of good or services.

Qualifications for a License: The legislation amends the qualifications for a license to include the word "tangible" in defining the net worth of the license applicant. "Tangible net worth" is defined as an entity's net worth less intangible assets, as determined by generally accepted accounting principles.

The Department of Banking and Securities (DOBS) may deny a license if it finds that the applicant, or a director, officer, partner, employee, agent, or owner of at least 10% of the applicant has been convicted of a crime of moral turpitude or a felony in any jurisdiction, or has been convicted of a crime which, if convicted in PA, would constitute a crime of moral turpitude or felony, at any time during the seven years prior to applying for the license.

DOBS may deny or otherwise restrict the license if it finds that the applicant, or a director, officer, partner, etc.:

- Has had a license or application denied, not renewed, or revoked by DOBS, another Commonwealth licensing authority or any other state or Federal regulatory agency;
- Is the subject of an order of DOBS or any regulatory agency;
- Has violated or failed to comply with provisions of this Act;
- Has outstanding debt to the Commonwealth or any Commonwealth agency;
- Does not possess the financial responsibility, character or reputation to warrant the belief that the money transmission business will be operated lawfully.

DOBS may impose conditions on the license. If such conditions are not met, DOBS can take any action against the license which it deems necessary.

Application for License: The legislation raises the application fee to \$5,000 (from \$2,000) and raises the renewal fee from \$2,000 to \$5,000.

The legislation permits DOBS to require an additional bond for licensure if it determines the bond required at application is not adequate. The additional bond may be in an amount up to the average daily outstanding balance of money received for transmission in the Commonwealth during the 30 days preceding DOBS' requirement plus an extra 10% of the amount of the average daily outstanding balance.

If the bonds become insolvent, the legislation adds that any administrative costs or fines imposed by DOBS will be paid by the principal of the bond as well as the current practice of paying for claims arising out of the issuance of transmittal instruments.

Term of License: The term of the license is changed, from expiration on the first of the year following issuance, to not more than 14 months as determined by DOBS.

Authority of DOBS: DOBS has the authority to:

- Examine any instrument, document, account, book, record or file of a licensee or make other investigations necessary to administer the Act, with the costs of any investigations payable by the licensee or entity subject to the investigation;
- Conduct hearings, issue subpoenas, and administer oaths;
- Request and receive information or records, including criminal history records from Federal, State, local or foreign government regarding an applicant or licensee;
- Issue regulations, statements of policy or orders necessary for the proper conduct of the money transmitter business;
- Prohibit or permanently remove persons or licensees responsible for violating the Act;
- Order restitution for a person or licensee for actual damages caused by a violating the Act;
- Issue cease and desist orders that are effective immediately; and
- Impose other conditions deemed appropriate by DOBS.

DOBS' decisions are appealable to the PA Banking and Securities Commission. A decision by the Commission, or an unappealed order of DOBS, is the final order of DOBS and is enforceable in a court of competent jurisdiction. Commission orders are appealable to Commonwealth Court.

Suspension, Revocation or Refusal: The legislation permits DOBS to suspend, revoke or refuse to renew a license if any fact is found that would have warranted DOBS' refusal of a license, or if any officer or employee of the licensee has:

- Made a false statement in an application or any report submitted to DOBS;
- Failed to comply with or violated any provision of the Act;
- Engaged in dishonest, fraudulent or illegal practices or conduct in a business, or unfair/unethical practices or conduct connected to the money transmission business;
- Been convicted of a crime of moral turpitude or a felony;
- Been enjoined by the court;
- Become the subject of an order of DOBS or other regulatory agency denying, suspending or revoking a license;
- Become the subject of a postal service fraud order;
- Failed to comply with the requirements of the Act regarding record keeping or production of records;
- Demonstrated negligence/incompetence in performance of an act for which licensure is required;
- Become insolvent (meaning the liabilities of the applicant or licensee exceed the assets).

DOBS may reinstate the license if the conditions which warranted suspension, etc. are corrected to DOBS' satisfaction and are unlikely to re-occur.

Licensee Requirements: A licensee shall:

- Operate in a safe and sound manner;
- Comply with all applicable Federal or State laws pertaining to the business of a money transmitter;
- Register all of its agents engaging in money transmitting who are located in the Commonwealth;
- File a report with DOBS concerning the money transmission business. A \$100 per day fee is charged for reports that are filed late;
- Provide DOBS with written notice within 10 days of any changes to the business;
- Maintain the bond and tangible net worth required by the Act.

Penalties: Grading for violations of the Act is increased from a misdemeanor to a felony, and fines are increased from \$2,500-\$5,000 to \$5,000-\$50,000. Prison time is changed from six months to two years to not more than seven years. Violators are also subject to a DOBS fine of up to \$10,000 (increased from up from \$2,000).

Agents: An agent may be appointed to conduct business pursuant to a written agreement between the agent and the person on whose behalf the agent is acting. The written agreement should minimally contain the following provisions:

- There is consent between the agent and the person on whose behalf the agent is acting;
- The agent is acting on the person's behalf for the transmittal of money;
- The agent is subject to the control of the person on whose behalf the agent is acting, meaning the licensee takes complete financial responsibility for the money being transmitted until the recipient receives the transmitted money;
- There is no risk of loss to the individual initiating the transmittal if the agent fails to remit the funds;
- Receipt of funds by the agent is deemed receipt of funds by the person on whose behalf the agent is acting;
- The agent may not provide money transmission outside the scope of activity permissible under the agreement; and
- Individuals doing business with the agent are aware that the agent is working on behalf of another.

FISCAL IMPACT: According to the Department of Banking and Securities, there are between 80 - 90 money transmission agents licensed in the Commonwealth. The Department believes that the increase in licensing fees would increase revenue into the Banking Fund based on the current licensed population. However, there is some potential that the number of licensees could be reduced due to the added exemption for agents of a government agency if such agents are disbursing government benefits.

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House Appropriations Committee (R)

DATE: October 26, 2016

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.