

One Hundred Second Legislature - Second Session - 2012

Introducer's Statement of Intent

LB964

Chairperson: Senator Rich Pahls

Committee: Banking, Commerce and Insurance

Date of Hearing: January 30, 2012

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 964 is a bill introduced at the request of the Nebraska Department of Banking and Finance (Department). Its purpose is to adopt the Nebraska Money Transmitters Act in order to organize, enhance, and modernize regulation of the industry which is engaged in the transmission of money, including electronic payment instruments, stored value, and the issuance and sale of travelers checks and money orders. LB 964 would repeal and replace the current Sale of Checks and Funds Transmission Act, Sections 8-1001 to 8-1019.

The proposed Nebraska Money Transmitters Act is based on a model legislative outline drafted by the Money Transmission Regulators Association, a group of state regulators. The outline represented an effort by state regulators to develop modern and more uniform legislation across the states. More than thirty states have used this outline to update their regulation of the industry. Certain provisions of the current Sale of Checks and Funds Transmission Act have been incorporated into the proposed new Act.

Section 1 provides that the name of the new Act is the Nebraska Money Transmitters Act (NMTA).

Sections 2 to 21 provide for the definition of terms used throughout the NMTA. Within these sections are terms and definitions imported from the current Sale of Checks and Funds Transmission Act, including "control," "Director," "licensee," and "person." These defined terms are found in Sections 5, 8, 12, and 19 of the bill. Terms consistently used in the financial regulatory setting, including "applicant," "controlling person," "Department," "executive officer," and "key shareholder" are defined in Sections 3, 6, 7, 10, and 11 of the bill.

Section 4 defines "authorized delegate" as an entity designated by the licensee or an exempt entity to engage in the business of money transmission on its behalf.

Section 9 defines “electronic instrument” as a card or other tangible object for the transmission or payment of money with the means for the storage of information. The card/object must be prefunded and reflect decreased value upon each use. Cards which are redeemable by the issuer for goods or services are excluded from the definition.

Section 13 defines “material litigation” as litigation that is significant to an applicant's or licensee's financial health and required to be referenced in annual audited financial statements, reports to shareholders, or similar documents, per generally accepted accounting principles.

Section 14 defines “monetary value” as a medium of exchange, whether or not redeemable in money.

Section 15 defines “money transmission” as a business for the sale or issuance of payment instruments or stored value; as the receiving of money or monetary value for transmission to another location by any means; and as certain bill payment services.

Section 16 defines “outstanding payment instrument” as any payment instrument issued and sold by a licensee or issued by a licensee and sold by its authorized delegate, which is reported as having been sold but not yet been paid by, or for, the licensee.

Section 17 defines “payment instrument” as any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, which has been sold or issued. Excluded from the definition are any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer for goods or services.

Section 18 defines “permissible investments” to include cash, certificates of deposit, bankers' acceptances, rated investments, government securities, and the like, with authority for the Director of the Department to authorize other securities or investments.

Section 20 defines “remit,” for purposes of a licensee, as a direct payment of funds to the licensee or deposit of funds to a designated financial institution.

Section 21 defines “stored value” as monetary value that is evidenced by an electronic record.

Section 22 provides exclusions to the licensing requirements of the NMTA for governments, political subdivisions, governmental agencies, the US Post Office, financial institutions and their subsidiaries, certain bank holding companies, certain authorized delegates, contractors providing governmental electronic benefits transfers; and operators of specified limited payment processing systems. Section 22 provides requirements that an authorized delegate must meet in order to be exempt from the licensing requirements.

Section 23 sets forth the licensing requirement for money transmitters who provide services to Nebraska residents, whether or not the money transmitter has a physical location in the state. These licenses are not transferable or assignable. Section 23 also provides for the use of authorized delegates.

Section 24 provides the requirements that must be met in order for the Department to grant a money transmitter license. The standards include net worth of fifty thousand dollars; proof that the business will be conducted honestly and fairly based on financial condition, financial

and business experience, and the character and general fitness of the applicant. These standards reflect current requirements set by Section 8-1004.

Section 25 combines the current requirements of Sections 8-1006 and 8-1008 that an applicant/licensee must obtain and maintain a surety bond in an amount based upon the number of locations at which it offers its services in Nebraska; that securities may be pledged to the Department in lieu of the surety bond requirement; that the Director may require an increase to the bond amount; and that the bond must remain in place for at least five years after the licensee ceases operations in the state.

Section 26 requires licensees to hold investments having an aggregate market value at least equal to the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This section also provides the Director of the Department with limited authority to waive the requirement, and deems these investments to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of bankruptcy of the licensee.

Section 27 provides that applications for a license are to be on forms created by the Director of the Department, as is currently set out in Section 8-1005.

Section 28 provides for an application fee of one thousand dollars, which is unchanged from current law, Section 8-1006.

Section 29 provides the Department with the responsibility of investigating license applications, allows for onsite investigations of an applicant, and reiterates the conditions for licensure. The section provides for a post-denial hearing in accordance with the Administrative Procedure Act.

Section 30 establishes the renewal requirements for licensees, which include the current requirements of Section 8-1009, for a July 1 annual renewal date, a license renewal application, a renewal fee of two hundred fifty dollars, and bond information. The section also provides for the filing of audited financials, lists of locations, authorized delegates, and investments; the number and dollar amount of payment instruments sold by the licensee in Nebraska, and any material changes to the business.

Section 31 provides that a licensee must (1) file notice with the Department within thirty calendar days of any material changes in information provided in a licensee's application, and (2) file a report within five business days of certain specified events. Section 31 mirrors Section 8-1019 of the current Act.

Section 32 provides for change of control procedures for licensees that mirror current law, Section 8-1018.

Section 33 provides authority for the Department to conduct annual onsite examinations of licensees upon reasonable written notice, and to conduct examinations of licensees and authorized delegates without prior notice if the Director of the Department has a reasonable basis to believe that the licensee is in noncompliance with the NMTA. The Department is authorized to conduct an examination with another state, and to accept another state's examination or a report from an independent accountant in lieu of an onsite examination. Examination expenses will be assessed to the licensee under this section of the bill.

Section 34 requires licensees to maintain records for a period of five years, allows for photographic or electronic record-keeping, and for storage of records outside of Nebraska.

Section 35 sets forth conditions that must be included in the written contract between a licensee and each of its authorized delegates.

Section 36 sets forth conduct standards for authorized delegates, including adherence to a licensee's written procedures and the handling and remission of money owed to the licensee. The section provides authority to the Department to cancel an authorized delegate's contract and take other disciplinary action against those entities.

Section 37 continues the authority of the Department to suspend or revoke a license currently provided in Section 8-1012. Section 37 would provide additional events which the Director of the Department may consider as cause to institute these proceedings against a licensee, including unsafe and unsound practices, failure to pay its obligations, and refusal to permit an examination. Section 37 also contains provisions that mirror Section 8-1012 regarding surrender, expiration, and cancellation of a license.

Section 38 provides for the suspension or revocation of authorized delegates by the Department in accordance with the Administrative Procedures Act, if the entity violates the NMTA, does not cooperate with an examination or investigation, engages in fraud, other bad acts or unsafe or unsound practices, or is convicted of money laundering.

Section 39 provides authority to the Department to issue cease and desist orders upon a determination that a violation of the NMTA has occurred. Subsections (1), (3), and (4) of Section 39 are virtually identical to Section 8-1016 (1), (2), and (3), respectively, of the current Act. Subsection (2) of Section 39 provides authority to order a licensee to cease and desist its business with an authorized delegate who is subject to a Departmental order issued under Section 38 of the bill.

Section 40 provides authority to the Department to impose administrative fines up to \$5,000 per violation for violations of the NMTA or Departmental rules or orders. Fines and investigation costs may only be assessed after notice and hearing.

Section 41 provides that certain bad acts will constitute Class III misdemeanors, including the making of false statements, certifications, or entries in records, violations of the NMTA, and unlicensed money transmission. This is the same penalty contained in Section 8-1014 for violations of the current Act.

Section 42 provides authority to the Department to issue rules, orders, findings, and demands under the NMTA.

Section 43 provides that the fees, charges, and costs collected by the Department pursuant to the NMTA will be credited to the Financial Institution Assessment Cash Fund, while fines will be distributed per the Nebraska Constitution, Article VII, section 5. These are current procedures.

Section 44 provides for savings and transitional provisions for entities currently licensed under the Nebraska Sale of Checks and Funds Transmission Act.

Section 45 amends Section 8-602, which is the general fees statute for financial institutions, to update the citation to the pledging of securities statute in Section 25 of the bill. No new fee is imposed by the amendment.

Section 46 provides for a delayed operative date of January 1, 2013.

Sections 47 and 48 contain the amendatory repeal provisions for the bill and provides for the outright repeal of Sections 8-1001 to 8-1019.

Principal Introducer: _____

Senator Rich Pahls