

**SUBJECT:** Licensing and regulation of currency exchange businesses

**COMMITTEE:** Financial Institutions — committee substitute recommended

**VOTE:** 7 ayes — Averitt, Denny, Ehrhardt, Elkins, Marchant, Pitts, Juan Solis  
0 nays  
2 absent — Solomons, Grusendorf

**WITNESSES:** For — None  
Against — None  
On — Don Clemmer, Office of the Attorney General; Catherine Ghiglieri, Texas Department of Banking

**BACKGROUND:** The 72nd Legislature enacted the Currency Exchange Act in 1991 to curb the ability of criminal organizations to launder money through illicit currency exchange houses located along the border, in Houston and elsewhere in Texas. The primary means established to detect money laundering were licensing and record keeping requirements.  
  
Despite these requirements, drug dealers were still able to launder money by transporting it across the border. Therefore, the 73rd Legislature enacted HB 474 by Cuellar in 1993 to regulate and require licenses of persons engaged in the transportation of currency. Licenses are valid for one year and must be prominently displayed. It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to knowingly violate currency exchange laws.

**DIGEST:** CSHB 2320 would revise Finance Code provisions concerning regulation of currency exchange, transmission, and transportation businesses.  
  
The banking commissioner could issue a cease and desist order without giving prior written notice and call a meeting with a license holder if the license holder violated the laws, committed fraud, or refused to submit to an

examination. The commissioner could issue an order to seize assets and records relating to currency exchange, transmission, or transportation activities if the commissioner found, by examination or other credible evidence, that the business had violated the law. The commissioner also could share information with foreign nations and local law enforcement officials, in addition to officials from this state, another state, or the federal government.

CSHB 2320 would amend the definition of “currency transportation” to include receiving currency or an instrument payable in currency that would have the effect of physically transporting currency via vehicle, the mail, or other courier. Instrument would be defined by sec. 3.104, Business and Commerce Code, and would include checks, cashier’s checks, certificate of deposit, demand draft, and other unconditional promises to pay a fixed sum of money. The bill would similarly amend the definition of “currency transmission” to include an instrument payable in currency.

The bill would redefine “currency exchange, transportation, or transmission business” to provide that offering or advertising these services, in addition to rendering them, would require the business to comply with the licensing requirements in Chapter 153, Finance Code.

The bill would delete the word “recklessly” from the requirements that applicants for a license to exchange, transport or transmit currency demonstrate that they have not failed to file federal currency transaction reports (for transactions exceeding \$10,000) and have not accepted currency derived from illegal activities within three years.

CSHB 2320 would specify the net worth standards to be \$25,000 multiplied by the number of locations, up to \$1 million.

The bill would specify that operators of ATMs and other electronic terminals are subject to the regulations applied to currency exchange businesses by Chapter 153, Finance Code.

The banking commissioner could exempt persons from the licensing requirements of Chapter 153, Finance Code, if licensure was not necessary or appropriate to achieve the objectives of the chapter. In addition, the following would be exempt from the licensing requirements:

! federally insured financial institutions;

- ! foreign branch banks established under the federal International Banking Act of 1978;
- ! check sellers licensed under Chapter 152, Finance Code;
- ! securities dealers registered under art. 581-1 et seq., VACS;
- ! attorneys or title companies disbursing only domestic currency on behalf of a party to a real property transaction;
- ! Federal Reserve banks; and
- ! bank clearinghouses exercising payment, collection and clearing functions.

Motor carriers that were both registered under Chapter 643, Transportation Code, and a licensed armored car company under art. 4413(29bb), VACS, would be exempt from licensing for currency transportation activities only.

The bill would require the banking commissioner to adopt desirable, in addition to necessary, rules to implement Chapter 153, Finance Code. The bill would extend the banking commissioner's authority to issue rules regarding the content of license holders' advertising, in addition to its size and type of lettering.

CSHB 2320 would allow persons prosecuted under sec. 153.401, Finance Code, to claim as a defense that the alleged violation was committed by a peace officer or on the request of a peace officer intending to facilitate a legitimate law enforcement investigation.

CSHB 2320 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

Criminal organizations have found ways around the requirements in the Currency Exchange Act and subsequent amendments by taking advantage of loopholes in the authority of the Texas Finance Commission and the banking commissioner to regulate currency exchange and currency transportation activities. Although current law has virtually eliminated illegitimate fly-by-night operations that primarily serviced laundered money, there continue to be avenues of laundering. This bill would close them.

CSHB 2320 would strengthen licensing requirements for currency transporters and bring more forms of transacting currency, including ATMs and money orders, under regulatory review. However, these tighter

requirements would not inhibit legitimate businesses engaged in legal commerce. The bill would authorize the banking commissioner to exempt persons from the licensing requirements if licensure was not necessary to achieve the objectives of the Currency Exchange Act. It also would exempt many commercial financial institutions that are regulated by the commission or other governmental bodies. Legitimate financial businesses and transportation companies favor these enhancements because it would help stop dishonest practitioners in their midst. The bill also has the support of law enforcement agencies and federal officials.

CSHB 2320 would clarify that the act of advertising currency exchange services would subject the business to regulatory requirements. This would help stop illegitimate houses that bilk unsuspecting tourists and assure the public that businesses advertising currency exchange services are legitimate.

The bill also would allow a greater sharing of information with other law enforcement officials to help track down and stop drug dealers, money launderers, and other forms of organized crime.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The substitute modified language in the original bill by including the requirement that an applicant for a license demonstrate the minimum net worth of \$25,000 multiplied by the number of locations the applicant operates. The substitute also revised permissible defense to prosecution under sec. 153.401, Finance Code.

The companion bill, SB 1544 by Sibley, has been referred to the Senate Economic Development Committee.