

BILL ANALYSIS

Senate Research Center

H.B. 2218
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Texas law currently regulates money services businesses under separate chapters of the Finance Code. Chapter 152 regulates businesses that issue and sell checks, money orders, stored value cards, and other payment instruments used to transfer money from one person to another. Chapter 153 regulates businesses that receive currency or an instrument payable in currency for transmission, exchange or transportation. The licensing requirements applicable to a particular activity depend primarily upon the form in which or how the money is received.

Texas law needs to be modernized as a result of the rapid pace of change in technology, the increasing importance of monitoring money transfers to detect money laundering and terrorist financing, and the need to foster more interstate cooperation among States regulating businesses operating globally. Regulation of nonbank money services businesses is left primarily to the States.

H.B. 2218 consolidates the regulation of money services businesses into one act, the Money Services Act, and repeals existing Chapters 152 and 153. The effect of this consolidation is to reflect and clarify the requirements and procedures that exist under current law while creating a statutory framework that treats money services businesses that engage in functionally similar transactions in a uniform manner. H.B. 2218 also serves law enforcement interests at the state and federal level by safeguarding against money laundering and terrorist activities as well as broadening the Texas Department of Banking enforcement authority over licensed and unlicensed holders including their agents.

H.B. 2218 modernizes the regulation of money services business in Texas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Sections 151.102, 151.204, 151.304, 151.402, 151.602, 151.603, and 151.605, Finance Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 3, Finance Code, by adding Chapter 151, as follows:

CHAPTER 151. REGULATION OF MONEY SERVICES BUSINESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. SHORT TITLE. Authorizes this chapter to be cited as the Money Services Act.

Sec. 151.002. DEFINITIONS. Provides that this section defines general terms that apply to an applicant for or holder of a money services license issued under this chapter, regardless of whether the license is a money transmission license or a currency exchange license. Provides that additional terms that apply specifically to money transmission are defined in Section 151.301 and that additional terms that apply specifically to currency exchange are defined in Section 151.501. Defines "applicant," "authorized delegate," "Bank Secrecy Act," "commission," "commissioner," "control," "currency exchange," "currency exchange license," "department," "executive officer," "license holder,"

"location," "material litigation," "money services," "money transmission," "money transmission license," "person," "principal," "record," "responsible individual," and "USA PATRIOT ACT."

Sec. 151.003. EXCLUSIONS. Provides that certain persons are not required to be licensed under this chapter.

[Reserves Sections 151.004-151.100 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 151.101. ADMINISTRATION. Requires the Texas Department of Banking (department) to administer this chapter.

Sec. 151.102. RULES. Authorizes the Finance Commission of Texas (commission) to adopt rules to administer and enforce this chapter, including rules necessary or appropriate for specific purposes. Provides that the presence or absence of a specific reference in this chapter to a rule regarding a particular subject is not intended to and does not limit the general rulemaking authority granted to the commission by this section.

Sec. 151.103. COMMISSIONER'S GENERAL AUTHORITY. (a) Provides that each power granted to the Banking Commissioner of Texas (commissioner) under this chapter is in addition to, and not in limitation of, each other power granted under this chapter. Provides that the fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other provision of this chapter.

(b) Provides that each power granted to the commissioner under this chapter is in addition to, and not in limitation of, powers granted to the commissioner under other law. Provides that the fact that the commissioner possesses, or has exercised, a power under any other provision of law does not preclude the commissioner from exercising any power under this chapter. Provides that the fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other law.

(c) Authorizes the commissioner to impose on any authority, approval, exemption, license, or order issued or granted under this chapter any condition the commissioner considers reasonably necessary or appropriate to carry out and achieve the purposes of this chapter.

Sec. 151.104. INVESTIGATIONS. (a) Authorizes the commissioner to conduct investigations in or outside this state and the United States as the commissioner considers necessary or appropriate to administer and enforce this chapter, including specific investigations.

(b) Authorizes the commissioner, for purposes of an investigation, examination, or other proceeding under this chapter, to administer or cause to be administered oaths, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any document that the commissioner determines to be relevant to the inquiry.

(c) Authorizes a district court of Travis County, if a person refuses to obey a subpoena, on application by the commissioner, to issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

(d) Authorizes the commissioner to employ a person or request the attorney general, the Department of Public Safety, or any other state, federal, or local law enforcement agency to assist in enforcing this chapter.

(e) Authorizes the commissioner to recover the reasonable costs incurred in connection with an investigation conducted under this chapter from the person that is the subject of the investigation.

Sec. 151.105. REGULATORY COOPERATION. (a) Authorizes the commissioner, to efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, to cooperate, coordinate, and share information with certain other state, federal, or foreign governmental agencies.

(b) Authorizes the commissioner, with respect to an agency described by and for the purposes set forth in Subsection (a), to take certain actions.

(c) Prohibits the commissioner from waiving, and provides that nothing in this section constitutes a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter or a rule adopted or order issued under this chapter to enforce compliance with applicable state or federal law.

(d) Provides that a joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this chapter.

(e) Provides that Chapter 2254, Government Code, does not apply to a contract or agreement entered into under this section.

Sec. 151.106. CONSENT TO SERVICE OF PROCESS. Provides that a license holder, an authorized delegate, or a person who knowingly engages in activities that are regulated and require a license under this chapter, with or without filing an application for a license or holding a license under this chapter, is considered to have consented to the jurisdiction of the courts of this state for all actions arising under this chapter.

[Reserves Sections 151.107-151.200 for expansion.]

SUBCHAPTER C. GENERAL QUALIFICATIONS AND PROVISIONS APPLICABLE TO MONEY SERVICES LICENSES

Sec. 151.201. SCOPE. Provides that this subchapter sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license or a currency exchange license. Provides that Subchapters D and E set forth the additional qualifications and provisions that apply specifically to a money transmission license. Provides that Subchapter F sets forth the additional qualifications and provisions that apply specifically to a currency exchange license.

Sec. 151.202. QUALIFICATIONS FOR LICENSE. (a) Requires an applicant, subject to Subsections (b) and (c), to qualify for a license under this chapter, to demonstrate certain qualifications to the satisfaction of the commissioner.

(b) Requires the commissioner, in determining whether an applicant has demonstrated satisfaction of the qualifications required to be identified relating to financial responsibility, to consider the financial responsibility and condition, financial and business experience, competence, character, and general fitness of each principal of, person in control of, principal of a person in control of, and proposed responsible individual of the applicant and authorizes the commissioner to deny approval of the application on the basis that the applicant has failed to demonstrate satisfaction of the requisite qualifications with respect to one or more of those persons.

(c) Prohibits the commissioner from issuing a license to an applicant if the applicant or certain persons involved with the applicant, have been convicted within the preceding 10 years of a criminal offense specified in Subsection (e).

(d) Authorizes the commissioner, on a finding that the conviction does not reflect adversely on the present likelihood that the applicant will conduct business in compliance with this chapter, rules adopted under this chapter, and other applicable state and federal law, to waive a disqualification under Subsection (c) based on the conviction of certain persons involved with the applicant.

(e) Provides that for purposes of Subsection (c), a disqualifying conviction is a conviction for a felony criminal offense under state or federal law that involves or relates to certain offenses or acts and under a similar law of a foreign country unless the applicant demonstrates to the satisfaction of the commissioner that the conviction was based on extenuating circumstances unrelated to the person's reputation for honesty and obedience to law.

(f) Provides that, for purposes of Subsection (c), a person is considered to have been convicted of an offense if the person has been found guilty or pleaded guilty or nolo contendere to the charge or has been placed on probation or deferred adjudication without regard to whether a judgment of conviction has been entered by the court.

Sec. 151.203. APPLICATION FOR LICENSE. (a) Requires an application for a license under this chapter to be made under oath and in the form and medium required by the commissioner. Sets forth specific information which must be contained in the application.

(b) Authorizes the commissioner, at the time the application is submitted or in connection with an investigation of the application under Section 151.204, to require the applicant, the spouse of the applicant, a principal of, individual who is a person in control of, or proposed responsible individual of the applicant, or any other individual associated with the applicant and the proposed licensed activities, to provide the department a complete set of fingerprints for purposes of a criminal background investigation.

(c) Requires an applicant to certify in writing on the application that the applicant and each principal of, person in control of, and proposed responsible individual of the applicant is familiar with and agrees to fully comply with all applicable state and federal laws and regulations pertaining to the applicant's proposed money services business, including this chapter, relevant provisions of the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271, has not within the preceding three years knowingly failed to file or evaded the obligation to file a report, including certain reports, and has not knowingly accepted money for transmission or exchange in which a portion of the money was derived from an illegal transaction or activity.

(d) Authorizes the commissioner to waive an application requirement or permit the submission of substituted information in lieu of the information generally required in an application, either with respect to a specific applicant or a category of applicants, if the commissioner determines that the waiver or substitution of information is consistent with achievement of the purposes of this chapter.

Sec. 151.204. PROCESSING AND INVESTIGATION OF APPLICATION. (a) Requires an application for a license under this chapter to be processed and acted on according to the time periods established by commission rule.

(b) Requires the commissioner, on receipt of an application that meets the requirements of Section 151.203 and Section 151.304 or 151.504, as applicable, to investigate the applicant to determine whether the prescribed qualifications have been met. Authorizes the commissioner to take certain actions.

(c) Authorizes the commissioner to collect from the applicant the reasonable expenses of an on-site examination or third-party investigation. Authorizes the commissioner, additionally, depending on the nature and extent of the

investigation required in connection with a particular application, to require an applicant to pay a nonrefundable investigation fee in an amount established by commission rule.

(d) Authorizes the commissioner to suspend consideration of an application for a license if the applicant or a principal of, person in control of, or proposed responsible individual of the applicant is the subject of a pending state or federal criminal prosecution, state or federal government enforcement action, or state or federal asset forfeiture proceeding until the conclusion of the prosecution, action, or proceeding.

Sec. 151.205. ISSUANCE OF LICENSE. Requires the commissioner to issue a license if the commissioner, with respect to the license for which application has been made, makes certain findings. Requires the commissioner, if the commissioner finds that the applicant for any reason fails to possess the qualifications or satisfy the requirements for the license for which application is made, to inform the applicant in writing that the application is denied and state the reasons for the denial. Authorizes the applicant to appeal the denial by filing a written request for a hearing with the commissioner not later than the 30th day after the date the notice is mailed. Requires a hearing on the denial to be held not later than the 45th day after the date the commissioner receives the written request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. Provides that the hearing is considered a contested case hearing and is subject to Section 151.801.

Sec. 151.206. TRANSFER OR ASSIGNMENT OF LICENSE. Prohibits a license issued under this chapter from being transferred or assigned.

Sec. 151.207. RENEWAL OF LICENSE. (a) Provides that, regardless of the date on which a license under this chapter is issued, the license expires on August 15 of each year unless the license is renewed in accordance with this section or is previously surrendered by the license holder or suspended or revoked by the commissioner.

(b) Requires a license holder, as a condition of renewal, to continue to possess the qualifications and satisfy the requirements that apply to an applicant for a new money transmission license or currency exchange license, as applicable. Requires a license holder, additionally, not later than July 1 of each year, to pay an annual renewal fee in an amount established by commission rule and submit a renewal report that is under oath, is in the form and medium required by the commissioner, and contains certain information.

(c) Requires the commissioner, if the department does not receive a license holder's renewal fee and complete renewal report on or before July 1, to notify the license holder in writing that the license holder has until August 15 to submit the renewal report and pay the renewal fee and the license holder must pay a late fee, in an amount that is established by commission rule and not subject to appeal, for each business day after July 1 that the commissioner does not receive the completed renewal report and renewal fee.

(d) Provides that, if the license holder fails to submit the completed renewal report and pay the renewal fee and any late fee due, the license expires effective 5 p.m. central daylight time on August 15, and the license holder must cease and desist from engaging in the business of money transmission or currency exchange, as applicable, as of that time. Provides that the expiration of a license is not subject to appeal.

(e) Requires the department, on timely receipt of a license holder's complete renewal report, renewal fee, and any late fee due, to review the report and, if necessary, investigate the business and records of the license holder. Authorizes the commissioner, on completion of the review and investigation, if any, to renew the license, impose conditions on the renewal of the license the commissioner

may consider reasonably necessary or appropriate, or suspend or revoke the license on the basis of a ground specified in Section 151.703.

(f) Authorizes the commissioner, on written application and for good cause shown, to extend the time for filing the fee and report required under this section.

(g) Requires the holder or principal of or the person in control of the holder of an expired license, or the holder or principal of or person in control of the holder of a license surrendered under Section 151.208, that wishes to conduct activities for which a license is required under this chapter to file a new license application and satisfy all requirements for licensure that apply at the time the new application is filed.

Sec. 151.208. SURRENDER OF LICENSE. Authorizes a license holder to surrender the license holder's license by delivering the original license to the commissioner along with a written notice of surrender that includes the location at which the license holder's records will be stored and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to the records. Requires a license holder to surrender the license holder's license if the license holder becomes ineligible for a license under Section 151.202(c). Provides that the surrender of a license does not reduce or eliminate a license holder's civil or criminal liability arising from any acts or omissions before the surrender of the license, including certain administrative actions undertaken by the commissioner. Provides that the surrender of a license does not release the security required of the license holder under Section 151.307 or 151.506.

Sec. 151.209. REFUNDS. Provides that a fee or cost paid under this chapter in connection with an application or renewal is not refundable.

[Reserves Sections 151.210-151.300 for expansion.]

SUBCHAPTER D. MONEY TRANSMISSION LICENSE

Sec. 151.301. DEFINITIONS. Defines "currency," "electronic instrument," "money," "monetary value," "money transmission," "outstanding," "payment instrument," "receive," "stored value," "and "unsafe or unsound act or practice."

Sec. 151.302. LICENSE REQUIRED. (a) Prohibits a person from engaging in the business of money transmission or advertising, soliciting, or holding itself out as a person that engages in the business of money transmission unless the person is licensed under this subchapter or meets certain other requirements.

(b) Provides that, for purposes of this subchapter, a person engages in the business of money transmission if the person conducts money transmission for person located in this state and receives compensation or expects to receive compensation, directly or indirectly, for conducting the transmissions, and a person solicits, advertises or holds itself out as a person that engages in the business of money transmission if the person represents that the person will conduct money transmission for persons located in this state.

(c) Authorizes the commissioner, on application and a finding that the exemption is in the public interest, to exempt certain persons.

(d) Authorizes a license holder to engage in the money transmission business at one or more locations in this state owned, directly or indirectly, by the license holder, or through one or more authorized delegates, or both, under a single license granted to the license holder.

Sec. 151.303. ADDITIONAL QUALIFICATIONS. Sets forth additional qualifications for an applicant for a money transmission license to demonstrate to the satisfaction of the commissioner.

Sec. 151.304. APPLICATION AND ACCOMPANYING FEE, STATEMENTS, AND SECURITY. Requires an applicant for a money transmission license to submit an application in accordance with Section 151.203. Requires an applicant, at the time an application for a money transmission license is submitted, to file with the department an application fee in the amount established by commission rule, audited financial statements that are satisfactory to the commissioner for purposes of determining whether the applicant has the minimum net worth required under Section 151.307 and is likely to maintain the required minimum net worth if a license is issued, and security in the amount of \$300,000, that meets the requirements of Section 151.308, and an undertaking or agreement that the applicant will increase or supplement the security to equal the aggregate security required by the commissioner under that section before the issuance of the license and the start of operations.

Sec. 151.305. INVESTIGATION AND ACTION ON APPLICATION. Requires the commissioner to investigate the applicant and act on the application in accordance with Sections 151.204 and 151.205.

Sec. 151.306. TEMPORARY LICENSE. Authorizes the commissioner to issue a temporary license to a person that is engaging in money transmission, but has not obtained a license under this subchapter, if the person meets certain requirements and pays the required fees. Prohibits the effective period for a temporary license from exceeding 90 days from the date the license is issued, provided that the commissioner may extend the period for not more than an additional 30 days if necessary to complete the processing of a timely filed application for which approval is likely.

Sec. 151.307. NET WORTH. Requires an applicant for a money transmission license to possess, and a money transmission license holder to maintain at all times, a minimum net worth computed in accordance with generally accepted accounting principles of \$100,000, if business is proposed to be or is conducted, directly or through an authorized delegate, at four or fewer locations, or \$500,000, if business is proposed to be or is conducted, directly or through an authorized delegate, at five or more locations. Authorizes the commissioner to increase the amount of net worth required of an applicant or license holder, up to a maximum of \$1 million, if the commissioner determines, with respect to the applicant or license holder, that a higher net worth is necessary to achieve the purposes of this chapter based on certain criteria.

Sec. 151.308. SECURITY. (a) Requires an applicant for a money transmission license to provide, and a money transmission license holder to maintain at all times, security consisting of a surety bond, an irrevocable letter of credit, or a deposit instead of a bond in accordance with this section.

(b) Provides that the amount of the required security is the greater of \$300,000 or an amount equal to one percent of the license holder's total yearly dollar volume of money transmission business in this state or the applicant's projected total volume of business in this state for the first year of licensure, up to a maximum of \$2 million. Authorizes the applicant or license holder, when the amount of the required security exceeds \$1 million, to, in the alternative, provide security in the amount of \$1 million, plus a dollar for dollar increase in the net worth of the applicant or license holder over the amount required under Section 151.307, up to a total amount of \$2 million.

(c) Sets forth specific requirements for the security.

(d) Authorizes a claimant to bring suit directly on the security, or the commissioner to bring suit on behalf of the claimant or the state, either in one action or in successive actions.

(e) Authorizes the commissioner to collect from the security or proceeds of the security any delinquent fee, assessment, cost, penalty, or other amount imposed on and owed by a license holder. Requires the commissioner, if the security is a

surety bond, to give the surety reasonable prior notice of a hearing to impose an administrative penalty against the license holder, provided that a surety may not be considered an interested, aggrieved, or affected person for purposes of an administrative proceeding under Section 151.801 or Chapter 2001, Government Code.

(f) Provides that the security remains in effect until canceled, which may occur only after providing 30 days' written notice to the commissioner. Provides that cancellation does not affect any liability incurred or accrued during the period covered by the security.

(g) Requires the security to cover claims for at least five years after the license holder surrenders its license or otherwise ceases to engage in activities for which a license is required under this subchapter. Authorizes the commissioner, however, to permit the amount of the security to be reduced or eliminated before that time to the extent that the amount of the license holder's obligations to the department and to purchasers in this state is reduced. Authorizes the commissioner to permit a license holder to substitute another form of security when the license holder ceases to provide money transmission in this state.

(h) Requires the commissioner, if the commissioner at any time reasonably determines that the required security is insecure, deficient in amount, or exhausted in whole or in part, to, by written order, require the license holder to file or make new or additional security to comply with this section.

(i) Authorizes an applicant or license holder, instead of providing all or part of the amount of the security required by this section, to deposit, with a financial institution possessing trust powers that is authorized to conduct a trust business in this state and is acceptable to the commissioner, an aggregate amount of United States currency, certificates of deposit, or other cash equivalents that equals the total amount of the required security or the remaining part of the security. Sets forth specific requirements for the deposit.

(j) Provides that the security is considered by operation of law to be held in trust for the benefit of this state and any individual to whom an obligation arising under this chapter is owed, and may not be considered an asset or property of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to the license holder's obligations under this chapter.

Sec. 151.309. PERMISSIBLE INVESTMENTS. (a) Requires a money transmission license holder to maintain at all times permissible investments that have an aggregate market value computed in accordance with generally accepted accounting principles in specific amount.

(b) Sets forth what constitutes a permissible investment for purposes of this section, except to the extent limited by Subsection (d).

(c) Provides that, in addition to investments listed in Subsection (b), a permissible investment for purposes of Subsection (a) includes specific investments..

(d) Authorizes the commissioner, with respect to a license holder, to limit or disallow for purposes of determining compliance with Subsection (a) an investment, surety bond, or letter of credit otherwise permitted by this section if the commissioner determines it to be unsatisfactory for investment purposes or to pose a significant supervisory concern.

(e) Provides that a permissible investment subject to this section, even if commingled with other assets of the license holder, is considered by operation of law to be held in trust for the benefit of any individual to whom an obligation arising under this chapter is owed, and may not be considered an asset or property

of the license holder in the event of bankruptcy, receivership, or a claim against the license holder unrelated to any of the license holder's obligations under this chapter.

[Reserves Sections 151.310-151.400 for expansion.]

SUBCHAPTER E. CONDUCT OF MONEY TRANSMISSION BUSINESS

Sec. 151.401. **LIABILITY OF LICENSE HOLDER.** Provides that a money transmission license holder is liable for the payment of all money or monetary value received for transmission either directly or through an authorized delegate appointed in accordance with Section 151.402.

Sec. 151.402. **CONDUCT OF BUSINESS THROUGH AUTHORIZED DELEGATE.**

(a) Authorizes a money transmission license holder to conduct business regulated under this chapter through an authorized delegate appointed by the license holder in accordance with this section. Provides that a license holder is responsible for the acts of the authorized delegate, of which the license holder has or reasonably should have knowledge, that are conducted pursuant to the authority granted by the license holder and that relate to the license holder's money transmission business.

(b) Requires a license holder, before a license holder is authorized to conduct business through an authorized delegate or allows a person to act as the license holder's authorized delegate, to adopt, and update as necessary, written policies and procedures designed to ensure that the license holder's authorized delegate complies with applicable state and federal law, enter into a written contract that complies with Subsection (c), and conduct a reasonable risk-based background investigation sufficient for the license holder to determine whether the authorized delegate has complied with applicable state and federal law.

(c) Requires the written contract required by Subsection (b)(2) to be signed by the license holder and the authorized delegate and, at a minimum, to meet certain requirements.

(d) Requires a license holder to report to the commissioner the theft or loss of payment instruments or stored value from the license holder or an authorized delegate in this state if the total value of the instruments or stored value exceeds \$10,000. Requires the license holder to make the report as soon as the license holder has knowledge of the theft or loss.

(e) Requires a license holder to notify the license holder's authorized delegates and require the delegates to take any action required by the commissioner if the license holder fails to renew the license holder's license or is subject to an emergency or final order that affects the conduct of the license holder's business through an authorized delegate.

(f) Requires a license holder to maintain a current list of authorized delegates located in this state that includes the name and business address of each delegate and must provide the list to the commissioner on request. Requires a license holder that engages in business through 11 or more authorized delegates located in this state to include on the license holder's website a list of the names and addresses of the authorized delegates of the license holder located in this state and the delegates' business addresses. Requires the license holder to update the list quarterly.

(g) Authorizes the commission, by rule, to exempt from one or more of the requirements of this chapter an authorized delegate that is a federally insured financial institution excluded under Section 151.003(3) or a foreign bank branch or agency excluded under Section 151.003(4).

Sec. 151.403. AUTHORIZED DELEGATE CONDUCT. Sets forth specific requirements for the conduct of an authorized delegate. Requires an authorized delegate to remit all money owed to the license holder in a specific manner and time period. Authorizes an authorized delegate, notwithstanding Subsection (b)(1), to remit the money at a later date if the authorized delegate maintains a certain amount on deposit with an office of a federally insured financial institution located in the United States. Provides that any business for which a license is required under this subchapter that is conducted by an authorized delegate outside the scope of authority conferred in the contract between the authorized delegate and the license holder is unlicensed activity.

Sec. 151.404. TRUST IMPOSED. Requires a license holder to hold in trust all money received for transmission directly or from an authorized delegate from the time of receipt until the time the transmission obligation is discharged.

(b) Requires a license holder's authorized delegate to hold in trust all money received for transmission by or for the license holder from the time of receipt until the time the money is remitted by the authorized delegate to the license holder. Provides that a trust resulting from the authorized delegate's actions is in favor of the license holder.

(c) Prohibits a license holder's authorized delegate from commingling the money received for transmission by or for the license holder with the authorized delegate's own money or other property, except to use in the ordinary course of the delegate's business for the purpose of making change, if the money is accounted for at the end of each business day.

(d) Provides that, if a license holder or the license holder's authorized delegate commingles any money received for transmission with money or other property owned or controlled by the license holder or delegate, all commingled money and other property are impressed with a trust as provided by this section in an amount equal to the amount of money received for transmission, less the amount of fees paid for the transmission.

(e) Provides that if the commissioner revokes a license holder's license under Section 151.703, all money held in trust by the license holder and the license holder's authorized delegates is assigned to the commissioner for the benefit of the persons to whom the related money transmission obligations are owed.

(f) Prohibits money of a license holder or authorized delegate impressed with a trust under this section from being considered an asset or property of the license holder or authorized delegate in the event of bankruptcy, receivership, or a claim against the license holder or authorized delegate unrelated to the license holder's or delegate's obligations under this chapter.

Sec. 151.405. DISCLOSURE REQUIREMENTS. Requires a license holder's name and mailing address or telephone number to be provided to the purchaser in connection with each money transmission transaction conducted by the license holder directly or through an authorized delegate. Requires a license holder receiving currency or an instrument payable in currency for transmission to comply with Chapter 278.

[Reserves Sections 151.406-151.500 for expansion.]

SUBCHAPTER F. CURRENCY EXCHANGE LICENSE

Sec. 151.501. DEFINITIONS. Provides that this section defines terms that apply specifically to an applicant for or holder of a currency exchange license issued under this subchapter. Defines "currency" and "currency exchange."

Sec. 151.502. LICENSE REQUIRED. (a) Prohibits a person from engaging in the business of currency exchange or advertising, soliciting, or holding itself out as providing

currency exchange unless the person is licensed under this subchapter or meets certain other requirements.

(b) Provides that, for purposes of this subchapter, a person engages in the business of currency exchange if the person exchanges currency and receives compensation or expects to receive compensation, directly or indirectly, for the currency exchange.

(c) Authorizes a license holder to engage in the currency exchange business at one or more locations in this state owned, directly or indirectly, by the license holder, under a single license.

(d) Authorizes the commissioner, on application and a finding that the exemption is in the public interest, to exempt 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, provided that certain persons are not eligible for the exemption.

(e) Authorizes the commissioner, in accordance with the investigation provisions of this chapter, to examine a person to verify the person's exempt status under Subsection (d).

Sec. 151.503. **QUALIFICATIONS.** Requires an applicant for a currency exchange license to have the qualifications set forth in Section 151.202.

Sec. 151.504. **APPLICATION AND ACCOMPANYING FEE AND SECURITY.** Requires an applicant for a currency exchange license to submit an application in accordance with Section 151.203. Requires an applicant, at the time an application for a currency exchange license is submitted, to file with the department an application fee in the amount established by commission rule and security in the amount of \$2,500 that meets the requirements of Section 151.506.

Sec. 151.505. **INVESTIGATION AND ACTION ON APPLICATION.** Requires the commissioner to investigate the applicant and act on the application in accordance with Sections 151.204 and 151.205.

Sec. 151.506. **SECURITY.** Requires an applicant for a currency exchange license to provide and a currency exchange license holder to maintain at all times security in the amount of \$2,500 that satisfies the requirements of and is subject to Sections 151.308(c)-(j).

[Reserves Sections 151.507-151.600 for expansion.]

SUBCHAPTER G. EXAMINATIONS, REPORTS, AND RECORDS

Sec. 151.601. **EXAMINATIONS.** (a) Authorizes the commissioner to examine a license holder or authorized delegate of a license holder as reasonably necessary or appropriate to administer and enforce this chapter and rules adopted and orders issued under this chapter and certain other applicable laws.

(b) Authorizes the commissioner to conduct specific examinations and take certain other actions.

(c) Requires a license holder or authorized delegate of a license holder to provide, and the commissioner to have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. Requires the records to be provided at the location and in the format specified by the commissioner.

(d) Requires a license holder, unless otherwise directed by the commissioner, to pay all costs reasonably incurred in connection with an examination of the license holder or the license holder's authorized delegate.

(e) Provides that disclosure of information to the commissioner under an examination request does not waive or otherwise affect or diminish confidentiality or a privilege to which the information is otherwise subject. Provides that information disclosed to the commissioner in connection with an examination is confidential under Section 151.606.

Sec. 151.602. RECORDS. (a) Requires a license holder to prepare, maintain, and preserve certain books, accounts, and other records for at least five years or another period as may be prescribed by rule of the commission.

(b) Authorizes the records required under this section to be maintained in a photographic, electronic, or other similar form, and maintained at the license holder's principal place of business or another location as may be reasonably requested by the commissioner.

(c) Requires an authorized delegate to prepare, maintain, and preserve the records required by commission rule or reasonably requested by the commissioner.

(d) Provides that the records required under this section are subject to inspection by the commissioner under Section 151.601.

(e) Requires the records required under this section and the reports required under Section 151.603 to be in English and the financial information contained in the records and reports to be denominated in United States dollars.

Sec. 151.603. REPORTS. (a) Requires an applicant or license holder to file a written report with the commissioner not later than the 15th day after the date the applicant or license holder knows or has reason to know of a material change in the information reported in an application or renewal report. Requires the report to describe the change and the anticipated impact of the change on the activities of the applicant or license holder in this state.

(b) Requires a money transmission license holder to prepare specific written reports and statements.

(c) Requires a currency exchange license holder to prepare a specific written report or statement.

(d) Requires a license holder to file the statements and reports required under this section with the commissioner as required by this chapter, by commission rule, or as requested by the commissioner.

(e) Authorizes the commissioner, on written application and for good cause shown, to extend the time for preparing or filing a statement or report required under this section.

Sec. 151.604. EXTRAORDINARY REPORTING REQUIREMENTS. Requires a license holder to file a written report with the commissioner not later than the 15th day after the date the license holder knows or has reason to know of a material change in the information reported in an application or renewal report. Requires the report to describe the change and the anticipated impact of the change on the license holder's activities in this state. Requires a license holder to file a written report with the commissioner not later than 24 hours after the license holder knows or has reason to know of certain acts and information.

Sec. 151.605. CHANGE OF CONTROL. (a) Provides that this section applies to a proposed change of control of a license holder that results in a person or group of persons

acting in concert, a "proposed person in control," after consummation of the acquisition transaction, controlling the license holder or a person in control of a license holder.

(b) Prohibits a person from directly or indirectly acquiring control of a license holder or a person in control of a license holder without the prior written approval of the commissioner, except as provided by this section.

(c) Requires a license holder or proposed person in control to give the commissioner written notice of a proposed change of control at least 45 days before the date the proposed transaction is to be consummated, request approval of the proposed change of control, and submit a nonrefundable fee in an amount established by commission rule.

(d) Provides that a proposed person in control is subject to the same standards and qualifications that apply to a principal of an applicant for a new license under this chapter. Authorizes the commissioner to require the license holder or proposed person in control to provide the same type of information, documentation, and certifications and may conduct the same type of investigation the commissioner requires and conducts in connection with a new license application.

(e) Requires the commissioner to approve a proposed change of control if the commissioner determines that the proposed person in control has the financial responsibility, financial condition, business experience, competence, character, and general fitness to warrant the belief that the business of the license holder will be conducted in compliance with this chapter, rules adopted under this chapter, and other applicable state and federal law and that the change of control will not jeopardize the public interest.

(f) Requires the commissioner, if the commissioner determines that the proposed person in control fails to meet the qualifications, standards, and requirements of this chapter, to inform the license holder and the proposed person in control in writing that the application is denied and state the reasons for the denial. Authorizes the license holder or the proposed person in control to appeal the denial by filing a written request for a hearing with the commissioner not later than the 30th day after the date the notice is mailed. Requires a hearing on the denial must be held not later than the 45th day after the date the commissioner receives the written request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. Provides that the hearing is considered a contested case hearing and is subject to Section 151.801.

(g) Provides that certain persons are exempt from the requirements of Subsection (a), but requires the license holder to notify the commissioner not later than the 15th day after the date the change of control becomes effective.

(h) Provides that Subsection (b) does not apply to a public offering of securities.

(i) Authorizes a license holder, before filing an application for approval of a proposed change of control, to submit a written request asking the commissioner to determine whether a person would be considered a proposed person in control of the license holder and whether the requirements of this section apply to the proposed transaction. Requires the request to be accompanied by a fee in an amount established by commission rule and to correctly and fully represent the facts relevant to the person and the proposed transaction. Requires the commissioner, if the commissioner determines that the person would not be a person in control of the license holder for purposes of this section, to advise the license holder in writing that this section does not apply to the proposed person and transaction.

Sec. 151.606. CONFIDENTIALITY. Provides that, except as otherwise provided by Subsection (b) or by rule of the commission, all financial information and all other

personal information obtained by the commissioner under this chapter through application, examination, investigation, or otherwise, and any related file or record of the department, is confidential and not subject to disclosure. Authorizes the commissioner to disclose confidential information in certain situations. Provides that this section does not prohibit the commissioner from disclosing certain information to the public.

[Reserves Sections 151.607-151.700 for expansion.]

SUBCHAPTER H. ENFORCEMENT

Sec. 151.701. **INJUNCTIVE RELIEF.** (a) Authorizes certain persons, whenever it appears that a person has violated, or that reasonable cause exists to believe that a person is likely to violate, this chapter or a rule adopted under this chapter, to bring an action for injunctive relief to enjoin the violation or enforce compliance with the provision.

(b) Authorizes the commissioner, in addition to the authority granted to the commissioner under Subsection (a) and through the attorney general, to bring an action for injunctive relief if the commissioner has reason to believe that a person has violated or is likely to violate an order of the commissioner issued under this chapter.

(c) Requires an action for injunctive relief brought by the commissioner, the attorney general, or the district attorney of Travis County under Subsection (a), or brought by the commissioner under Subsection (b), to be brought in a district court in Travis County. Requires an action brought by a prosecuting attorney under Subsection (a)(4) to be brought in a district court in the county in which all or part of the violation is alleged to have occurred.

(d) Authorizes the court, on a proper showing, to issue a restraining order, an order freezing assets, a preliminary or permanent injunction, or a writ of mandate, or to appoint a receiver for the defendant or the defendant's assets.

(e) Authorizes a receiver appointed by the court under Subsection (d), with approval of the court, to exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties.

(f) Authorizes an action brought under this section to include a claim for ancillary relief, including a claim by the commissioner for costs or civil penalties authorized under this chapter, or for restitution or damages on behalf of the persons injured by the act constituting the subject matter of the action, and the court has jurisdiction to award that relief.

Sec. 151.702. **UNLICENSED PERSONS.** Authorizes the commissioner, if the commissioner has reason to believe that an unlicensed person has engaged or is likely to engage in an activity for which a license is required under this chapter, to order the person to cease and desist from the violation until the person is issued a license under this chapter. Provides that the commissioner's order is subject to Section 151.709, unless the order is issued as an emergency order. Authorizes the commissioner to issue an emergency cease and desist order in accordance with Section 151.710 if the commissioner finds that the person's violation or likely violation threatens immediate and irreparable harm to the public.

Sec. 151.703. **SUSPENSION AND REVOCATION OF LICENSE.** (a) Requires the commissioner to revoke a license if the commissioner finds that the net worth of the license holder is less than the amount required under this chapter or the license holder does not provide the security required under this chapter.

(b) Authorizes the commissioner to suspend or revoke a license or order a license holder to revoke the designation of an authorized delegate if the commissioner has reason to believe that certain actions or violations have occurred.

(c) Authorizes the commissioner to consider certain factors in determining whether a license holder has engaged in an unsafe or unsound act or practice or has conducted business in an unsafe or unsound manner.

(d) Provides that the commissioner's order suspending or revoking a license or directing a license holder to revoke the designation of an authorized delegate is subject to Section 151.709, unless the order is issued as an emergency order. Authorizes the commissioner to issue an emergency order suspending a license or directing a license holder to revoke the designation of an authorized delegate in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Sec. 151.704. **SUSPENSION AND REVOCATION OF AUTHORIZED DELEGATE DESIGNATION.** Authorizes the commissioner to suspend or revoke the designation of an authorized delegate if the commissioner has reason to believe that certain violations or actions have occurred. Authorizes the commissioner, in determining whether an authorized delegate has engaged in an unsafe or unsound act or practice or conducted business in an unsafe or unsound manner, to consider certain factors. Provides that the commissioner's order suspending or revoking the designation of an authorized delegate is subject to Section 151.709, unless the order is issued as an emergency order. Authorizes the commissioner to issue an emergency order suspending the designation of an authorized delegate in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Sec. 151.705. **CEASE AND DESIST ORDERS.** (a) Authorizes the commissioner to issue an order to cease and desist if the commissioner finds that an action, violation, or condition listed in Section 151.703 or 151.704 exists with respect to a license holder or authorized delegate and a cease and desist order is necessary to protect the interests of the license holder, the purchasers of the license holder's money services, or the public.

(b) Authorizes a cease and desist order to require a license holder or authorized delegate to cease and desist from the action or violation or to take affirmative action to correct any condition resulting from or contributing to the action or violation, and authorizes the requirements of the order to apply to a principal or responsible person of the license holder or authorized delegate.

(c) Provides that the cease and desist order is subject to Section 151.709, unless the order is issued as an emergency order. Authorizes the commissioner to issue an emergency cease and desist order in accordance with Section 151.710 if the commissioner finds that the factors identified in Section 151.710(b) exist.

Sec. 151.706. **CONSENT ORDERS.** Authorizes the commissioner to enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. Requires a consent order to be signed by the person to whom the order is issued or by the person's authorized representative and to indicate agreement with the terms contained in the order. Authorizes a consent order, however, to provide that the order does not constitute an admission by a person that this chapter or a rule adopted or order issued under this chapter has been violated. Provides that a consent order is a final order and may not be appealed.

Sec. 151.707. **ADMINISTRATIVE PENALTY.** (a) Authorizes the commissioner, after notice and hearing to assess an administrative penalty against certain persons.

(b) Authorizes a violation corrected after a person receives written notice from the department of the violation to be considered for purposes of determining whether a person has engaged in a pattern of violations or demonstrated wilful disregard for the requirements of this chapter.

(c) Prohibits the amount of the penalty from exceeding \$5,000 for each violation or, in the case of a continuing violation, \$5,000 for each day that the violation

continues. Provides that each transaction in violation of this chapter and each day that a violation continues is a separate violation.

(d) Requires the commissioner, in determining the amount of the penalty, to consider factors that include the seriousness of the violation, the person's compliance history, and the person's good faith in attempting to comply with this chapter. Requires the trier of fact, if the person is found to have demonstrated wilful disregard for the requirements of this chapter, to recommend that the commissioner impose the maximum administrative penalty permitted under Subsection (c).

(e) Provides that a hearing to assess an administrative penalty is considered a contested case hearing and is subject to Section 151.801.

(f) Provides that an order imposing an administrative penalty after notice and hearing becomes effective and is final for purposes of collection and appeal immediately on issuance.

(g) Authorizes the commissioner to collect an administrative penalty assessed under this section in the same manner that a money judgment is enforced in court or, if the penalty is imposed against a license holder or a license holder's authorized delegate, from the proceeds of the license holder's security in accordance with Section 151.308(e).

Sec. 151.708. CRIMINAL PENALTY. Provides that a person commits an offense if the person intentionally makes a false statement, misrepresentation, or certification in a record or application filed with the department or required to be maintained under this chapter or a rule adopted or order issued under this chapter, 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 license is required under Subchapter D or F without being licensed under this chapter.

(b) Provides that an offense under this section is a felony of the third degree.

(c) Authorizes the commissioner, if the commissioner has reason to believe that a person has committed an offense under this section or any other state or federal law, to file a criminal referral with the district attorney of Travis County or an appropriate prosecuting attorney of the county in which the offense is alleged to have been committed.

(d) Provides that nothing in this section limits the power of the state to punish a person for an act that constitutes an offense under this or any other law.

Sec. 151.709. NOTICE, HEARING, AND OTHER PROCEDURES FOR NONEMERGENCY ORDERS. (a) Provides that this section applies to an order issued by the commissioner under this subchapter that is not an emergency order.

(b) Provides that an order to which this section applies becomes effective only after notice and an opportunity for a hearing. Sets forth specific requirements for the order.

(c) Provides that, unless the commissioner receives a written request for hearing from the person against whom the order is directed not later than the 20th day after the date the order is delivered or mailed, the order takes effect as stated in the order and is final against and nonappealable by that person from that date.

(d) Requires a hearing on the order to be held not later than the 45th day after the date the commissioner receives the written request for the hearing unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date.

(e) Provides that an order that has been affirmed or modified after a hearing becomes effective and is final for purposes of enforcement and appeal immediately on issuance. Authorizes the order to be appealed to the district court of Travis County as provided by Section 151.801(b).

Sec. 151.710. REQUIREMENTS AND NOTICE AND HEARING PROCEDURES FOR EMERGENCY ORDERS. (a) Provides that this section applies to an emergency order issued by the commissioner under this subchapter.

(b) Authorizes the commissioner to issue an emergency order, without prior notice and an opportunity for hearing, if the commissioner makes certain findings.

(c) Authorizes the commissioner, in connection with and as directed by an emergency order, to seize the records and assets of a license holder or authorized delegate that relate to the license holder's money services business.

(d) Sets forth the requirements for an emergency order.

(e) Provides that an emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the issuance of the order.

(f) Requires a license holder or authorized delegate against whom an emergency order is directed to submit a written certification to the commissioner, signed by the license holder or authorized delegate, and their principals and responsible individuals, as applicable, and each person named in the order, stating that each person has received a copy of and has read and understands the order.

(g) Provides that, unless the commissioner receives a written request for a hearing from a person against whom an emergency order is directed not later than the 15th day after the date the order is delivered or mailed, the order is final and nonappealable as to that person on the 16th day after the date the order is delivered or mailed.

(h) Provides that a request for a hearing does not stay an emergency order.

(i) Provides that a hearing on an emergency order takes precedence over any other matter pending before the commissioner, and must be held not later than the 10th day after the date the commissioner receives the written request for hearing unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date.

(j) Provides that an emergency order that has been affirmed or modified after a hearing is final for purposes of enforcement and appeal. Authorizes the order to be appealed to the district court of Travis County as provided in Section 151.801(b).

[Reserves Sections 151.711-151.800 for expansion.]

SUBCHAPTER I. ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Sec. 151.801. ADMINISTRATIVE PROCEDURES. Requires all administrative proceedings under this chapter to be conducted in accordance with Chapter 2001 (Administrative Procedure), Government Code, and Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), Texas Administrative Code. Authorizes a person affected by a final order of the commissioner issued under this chapter after a hearing to appeal the order by filing a petition for judicial review filed in the district court of Travis County. Provides that a petition for judicial review filed in the district court under this subsection does not stay or vacate the appealed order unless the court, after notice and hearing, specifically stays or vacates the order.

SECTION 2. (a) Provides that a license issued under Chapter 152, Finance Code, or Chapter 153, Finance Code, that is in effect on September 1, 2005, remains in force as a license under Chapter 152, Finance Code, or Chapter 153, Finance Code, until August 15, 2006. Provides that the license expires on August 15, 2006, unless the license holder renews the license in accordance with this Act. Provides that, except as provided by this section, a license holder that seeks to renew its license must satisfy the net worth, security, permissible investment, and other substantive requirements for licensure established in Chapter 151, Finance Code, as added by this Act.

(b) Provides that a person licensed as of September 1, 2005, to engage in the business of currency transmission or currency transportation under Chapter 153, Finance Code, has until August 15, 2011, to satisfy the net worth and permissible investment requirements established in Chapter 151, Finance Code, as added by this Act. Authorizes the Banking Commissioner of Texas to extend the period beyond that date on a year-by-year basis for good cause shown.

(c) Provides that a person licensed as of September 1, 2005, to engage in the business of currency transmission or currency transportation under Chapter 153, Finance Code, has until August 15, 2007, to satisfy the security requirements established in Chapter 151, Finance Code, as added by this Act.

(d) Provides that a contract between a license holder and an authorized delegate that is in effect on September 1, 2005, remains in effect until the earlier of the date the contract is renewed or December 31, 2006. Provides that a new or renewal contract entered into between a license holder and an authorized delegate after the effective date of this Act must satisfy the contract requirements established in Chapter 151, Finance Code, as added by this Act.

(e) Authorizes the Finance Commission of Texas to adopt rules to further provide for the orderly transition to licensing and regulation under this Act.

SECTION 3. Repealer: Chapters 152 (Check Sellers) and 153 (Currency Exchange, Transportation, or Transmission), Finance Code.

SECTION 4. Effective date: September 1, 2005.