

ASSEMBLY BILL

No. 2209

Introduced by Assembly Member Dickinson

February 20, 2014

An act to amend Sections 2001, 2003, 2010, 2031, 2032, 2036, 2038, 2039, 2043, 2088, 2102, 2103, 2105, 2124, and 2175 of, and to add Section 2176 to, the Financial Code, relating to money transmission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2209, as introduced, Dickinson. Money Transmission Act.

Existing law, the Money Transmission Act, provides for the regulation of money transmissions and, unless an exemption applies, requires the licensure by the Commissioner of Business Oversight of persons, including corporations and limited liability companies, to engage in this activity. Existing law declares the need to regulate money transmission businesses in the state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of California. Under existing law, a licensure under the act is required to file various reports with the commissioner with specified information, including the total volume of activities, number of transactions conducted and outstanding money transmissions in California and the United States in a given calendar year quarter, as specified. It is a felony to make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act, or to engage in an activity for which a license is required without being licensed or exempt from licensure.

This bill would revise the definition of money transmission for purposes of the act, by deleting the component of the definition

involving receipt of money for transmission and replacing it with a third party’s acceptance of currency, funds, or other value from a payor and delivery of the currency, funds, or other value to a payee. The bill would exclude from this definition transactions in which the recipient of the currency, funds, or other value is an agent of the payee, as specified. The bill would revise and reorganize various provisions of the act relating to, among other things, the definition of relevant terms under the act, and the required contents of license applications and customer receipts. The bill would require that the report described above also include whether an outstanding money transmission was conducted via mobile or other electronic application. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would include legislative declarations relating to the expansion of money transmission services to include the use of mobile applications, alternative point of sale systems, and other consumer payment systems. The bill would authorize the commissioner to exercise any power set forth in the act with respect to a money transmission business, if necessary for the general welfare of the public, regardless of the licensure status of the money transmission business. The bill would revise provisions relating to the commissioner’s authority to provide guidance to prospective applicants for a license to operate money transmission business.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2001 of the Financial Code is amended
- 2 to read:
- 3 2001. The Legislature finds and declares all of the following:
- 4 (a) Money transmission businesses conduct a significant amount
- 5 of business in this state and technological advances are occurring
- 6 in the provision of money transmission services, *which have*
- 7 *expanded money transmission to include the use of mobile*

1 *applications, alternative point of sale systems, and other consumer*
2 *payment systems.*

3 (b) Persons who use money transmission businesses in this state
4 use those businesses for, among other purposes, paying for the
5 necessities of life and transmitting money to family members.

6 (c) The failure of money transmission businesses to fulfill their
7 obligations would cause loss to consumers, disrupt the payments
8 mechanism in this state, undermine public confidence in financial
9 institutions doing business in this state, and adversely affect the
10 health, safety, and general welfare of persons in this state.

11 (d) To protect the interests of consumers of money transmission
12 businesses in this state, to maintain public confidence in financial
13 institutions doing business in this state, and to preserve the health,
14 safety, and general welfare of the people of this state, it is necessary
15 to regulate money transmission businesses in this state.

16 SEC. 2. Section 2003 of the Financial Code is amended to read:

17 2003. For purposes of this division, the following definitions
18 shall apply:

19 (a) "Affiliate," when used with respect to a specified person,
20 means any person controlling, controlled by, or under common
21 control with, that specified person, directly or indirectly through
22 one or more intermediaries. For purposes of subdivisions (q) and
23 (v), a specified person is affiliated with another person if that
24 person controls, is controlled by, or under common control through
25 the ownership directly or indirectly of shares or equity securities
26 possessing more than 50 percent of the voting power of that
27 specified person.

28 (b) "Agent" means a person that is not itself licensed as a money
29 transmitter in California and provides money transmission in
30 California on behalf of the licensee, provided that the licensee
31 becomes liable for the money transmission from the time money
32 or monetary value is received by that person. However, "agent"
33 does not include any officer or employee of the licensee when
34 acting as such at an office of a licensee.

35 (c) "Applicant" means a person that files an application for a
36 license or for acquisition of control of a licensee under this division.

37 (d) "Average daily outstanding" means the amount of
38 outstanding money transmission obligations in California at the
39 end of each day in a given period of time, added together, and
40 divided by the total number of days in that period of time.

- 1 (e) “Branch office” means any office in this state of a licensee
2 or agent at which the licensee receives money or monetary value
3 to provide money transmission, either directly or through an agent.
- 4 (f) “Business day” means one of the following:
- 5 (1) When used with respect to any act to be performed in this
6 state, any day other than Saturday, Sunday, or any other day that
7 is provided for as a holiday in the Government Code.
- 8 (2) When used with respect to any act to be performed in any
9 jurisdiction other than this state, any day other than a day that is
10 a legal holiday under the laws of that jurisdiction.
- 11 (g) “Commissioner” means the Commissioner of Business
12 Oversight.
- 13 (h) “Control” has the meaning set forth in Section 1250.
- 14 (i) “Day” means calendar day.
- 15 (j) “In California” or “in this state” means physically located
16 in California, or with, to, or from persons located in California.
- 17 (k) “Issue” and “issuer” mean, with regard to a payment
18 instrument, the entity that is the maker or drawer of the instrument
19 in accordance with the California Commercial Code and is liable
20 for payment. With regard to stored value, “issue” and “issuer”
21 mean the entity that is liable to the holder of stored value and has
22 undertaken or is obligated to pay the stored value. Only a licensee
23 may issue stored value or payment instruments.
- 24 (l) “Licensee” means a corporation or limited liability company
25 licensed under this division.
- 26 (m) *“Material litigation” means litigation that according to*
27 *United States generally accepted accounting principles is*
28 *significant to an applicant’s or a licensee’s financial health and*
29 *would be required to be disclosed in the applicant’s or licensee’s*
30 *annual audited financial statements, report to shareholders, or*
31 *similar records.*
- 32 ~~(m)~~
- 33 (n) “Monetary value” means a medium of exchange, whether
34 or not redeemable in money.
- 35 ~~(n)~~
- 36 (o) “Money” means a medium of exchange that is authorized
37 or adopted by the United States or a foreign government. The term
38 includes a monetary unit of account established by an
39 intergovernmental organization or by agreement between two or
40 more governments.

- 1 ~~(o)~~
- 2

(p) “Money transmission” means any of the following:
- 3 (1) Selling or issuing payment instruments.
- 4 (2) Selling or issuing stored value.
- 5 ~~(3) Receiving money for transmission.~~
- 6 (3) (A) *A third party’s acceptance of currency, funds, or other*
- 7 *value from a payor and delivery of the currency, funds, or other*
- 8 *value to the payee. “Money transmission” does not include a*
- 9 *transaction in which the recipient of the currency, funds, or other*
- 10 *value is an agent of the payee, and delivery of the funds to the*
- 11 *agent satisfies the payor’s obligation to the payee.*
- 12 (B) *For purposes of this paragraph, “agent” has the same*
- 13 *meaning as that term is defined in Section 2295 of the Civil Code.*
- 14 (C) *For purposes of this paragraph, “payee” means the intended*
- 15 *recipient of currency, funds, or other value from a payor.*
- 16 ~~(p)~~
- 17

(q) “Outstanding,” with respect to payment instruments and
- 18 stored value, means issued or sold by the licensee in the United
- 19 States and not yet paid or refunded by the licensee, or issued or
- 20 sold on behalf of the licensee in the United States by its agent and
- 21 reported as sold, but not yet paid or refunded by the licensee.
- 22 “Outstanding,” with respect to receiving money for transmission
- 23 means all money or monetary value received in the United States
- 24 for transmission by the licensee or its agents but not yet paid to
- 25 the beneficiaries or refunded to the person from whom the money
- 26 or monetary value was received. All outstanding money
- 27 transmission of a licensee is and shall remain a liability of the
- 28 licensee until it is no longer outstanding.
- 29 ~~(q)~~
- 30

(r) “Payment instrument” means a check, draft, money order,
- 31 traveler’s check, or other instrument for the transmission or
- 32 payment of money or monetary value, whether or not negotiable.
- 33 The term does not include a credit card voucher, letter of credit,
- 34 or any instrument that is redeemable by the issuer for goods or
- 35 services provided by the issuer or its affiliate.
- 36 ~~(r)~~
- 37

(s) “Person” means an individual, corporation, business trust,
- 38 estate, trust, partnership, proprietorship, syndicate, limited liability
- 39 company, association, joint venture, government, governmental
- 40 subdivision, agency or instrumentality, public corporation or joint

1 stock company, or any other organization or legal or commercial
 2 entity, provided, however, that “person,” when used with respect
 3 to acquiring control of or controlling a specified person, includes
 4 any combination of two or more persons acting in concert.

5 ~~(s)~~
 6 (t) “Receiving money for transmission” or “money received for
 7 transmission” means receiving money or monetary value in the
 8 United States for transmission within or outside the United States
 9 by electronic or other means. The term does not include sale or
 10 issuance of payment instruments and stored value.

11 ~~(t)~~
 12 (u) “Record” means information that is inscribed on a tangible
 13 medium or that is stored in an electronic or other medium and is
 14 retrievable in perceivable form.

15 ~~(t)~~
 16 (v) “State” means a state of the United States, the District of
 17 Columbia, Puerto Rico, the United States Virgin Islands, or any
 18 territory or insular possession subject to the jurisdiction of the
 19 United States.

20 ~~(v)~~
 21 (w) “Stored value” means monetary value representing a claim
 22 against the issuer that is stored on an electronic or digital medium
 23 and evidenced by an electronic or digital record, and that is
 24 intended and accepted for use as a means of redemption for money
 25 or monetary value or payment for goods or services. The term does
 26 not include a credit card voucher, letter of credit, or any stored
 27 value that is only redeemable by the issuer for goods or services
 28 provided by the issuer or its affiliate, except to the extent required
 29 by applicable law to be redeemable in cash for its cash value.

30 ~~(w)~~
 31 (x) “Traveler’s check” means an instrument that meets all of
 32 the following:

33 (1) Is designated on its face by the term “traveler’s check” or
 34 by any substantially similar term or is commonly known and
 35 marketed as a traveler’s check.

36 (2) Contains a provision for a specimen signature of the
 37 purchaser to be completed at the time of purchase.

38 (3) Contains a provision for a countersignature of the purchaser
 39 to be completed at the time of negotiation.

40 SEC. 3. Section 2010 of the Financial Code is amended to read:

1 2010. This division does not apply to the following:

2 (a) The United States or a department, agency, or instrumentality
3 thereof, including any federal reserve bank and any federal home
4 loan bank.

5 (b) Money transmission by the United States Postal Service or
6 by a contractor on behalf of the United States Postal Service.

7 (c) A state, county, city, or any other governmental agency or
8 governmental subdivision of a state.

9 (d) A commercial bank or industrial bank, the deposits of which
10 are insured by the Federal Deposit Insurance Corporation or its
11 successor, or any foreign (other nation) bank that is licensed under
12 ~~Article 3 (commencing with Section 1800)~~ of Chapter 20
13 (*commencing with Section 1750*) or that is authorized under federal
14 law to maintain a federal agency or federal branch office in this
15 state; a trust company licensed pursuant to Section 1042 or a
16 national association authorized under federal law to engage in a
17 trust banking business; an association or federal association, as
18 defined in Section 5102 the deposits of which are insured by the
19 Federal Deposit Insurance Corporation or its successor; and any
20 federally or state chartered credit union, *with an office in*
21 *California*, the member accounts of which are insured or
22 guaranteed as provided in Section 14858.

23 (e) Electronic funds transfer of governmental benefits for a
24 federal, state, county, or local governmental agency by a contractor
25 on behalf of the United States or a department, agency, or
26 instrumentality thereof, or a state or governmental subdivision,
27 agency, or instrumentality thereof.

28 (f) A board of trade designated as a contract market under the
29 federal Commodity Exchange Act (7 U.S.C. ~~Sees. 1–25, incl.~~) *Sec.*
30 *I et seq.*) or a person that, in the ordinary course of business,
31 provides clearance and settlement services for a board of trade to
32 the extent of its operation as or for such a board.

33 (g) A person that provides clearance or settlement services
34 pursuant to a registration as a clearing agency or an exemption
35 from registration granted under the federal securities laws to the
36 extent of its operation as such a provider.

37 (h) An operator of a payment system to the extent that it provides
38 processing, clearing, or settlement services, between or among
39 persons excluded by this section, in connection with wire transfers,
40 credit card transactions, debit card transactions, stored value

1 transactions, automated clearing house transfers, or similar funds
2 transfers, to the extent of its operation as such a provider.

3 (i) A person registered as a securities broker-dealer under federal
4 or state securities laws to the extent of its operation as such a
5 broker-dealer.

6 (j) A person that delivers wages or salaries on behalf of
7 employers to employees or facilitates the payment of payroll taxes
8 to state and federal agencies, makes payments relating to employee
9 benefit plans, makes distribution of other authorized deductions
10 from employees' wages or salaries, or transmits other funds on
11 behalf of an employer in connection with transactions related to
12 employees. Notwithstanding this subdivision, a person described
13 herein that offers money transmission services or provides stored
14 value cards directly to individual customers shall comply with this
15 division to the extent of ~~such~~ *that* activity.

16 (k) A person listed under subdivision (d) is exempted from all
17 the provisions of this division, except Sections 2062 and 2063.

18 SEC. 4. Section 2031 of the Financial Code is amended to read:

19 ~~2031. (a) No person other than a corporation or limited liability
20 company may apply for or be issued a license.~~

21 ~~(b) No person other than the following may be issued a license:~~

22 ~~(1)~~

23 *2031. Only the following persons may apply for or be issued
24 a license:*

25 (a) A corporation or limited liability company organized under
26 the laws of this state.

27 ~~(2)~~

28 (b) A corporation, other than a corporation organized under the
29 laws of this state, that is qualified to transact intrastate business in
30 this state under Chapter 21 (commencing with Section 2100) of
31 Division 1 of Title 1 of the Corporations Code.

32 ~~(3)~~

33 (c) A limited liability company, other than a limited liability
34 company organized under the laws of this state, that is qualified
35 to transact intrastate business in this state under ~~Chapter 10
36 (commencing with Section 17450) of Title 2.5 Article 8
37 (commencing with Section 17708.01) of the Corporations Code,~~
38 ~~except that~~ a limited liability company that is organized outside
39 the United States shall not be issued a license.

40 SEC. 5. Section 2032 of the Financial Code is amended to read:

1 ~~2032. (a) In this section, “material litigation” means litigation~~
2 ~~that according to United States generally accepted accounting~~
3 ~~principles is significant to an applicant’s or a licensee’s financial~~
4 ~~health and would be required to be disclosed in the applicant’s or~~
5 ~~licensee’s annual audited financial statements, report to~~
6 ~~shareholders, or similar records.~~

7 ~~(b)~~

8 2032. (a) An applicant for licensure under this division shall
9 pay to the commissioner a nonrefundable fee of five thousand
10 dollars (\$5,000).

11 ~~(e)~~

12 (b) An applicant for a license under this division shall do so in
13 a form and in a medium prescribed by the commissioner by order
14 or regulation. The application shall state or contain all of the
15 following:

16 (1) The legal name and residential business address of the
17 applicant and any fictitious or trade name used by the applicant in
18 conducting its business.

19 (2) A list of any criminal convictions of the applicant and any
20 material litigation in which the applicant has been involved in the
21 10-year period next preceding the submission of the application.

22 (3) A description of any money transmission services previously
23 provided by the applicant and the money transmission services
24 that the applicant seeks to provide in this state.

25 (4) A list of the applicant’s proposed agents and the locations
26 in this state where the applicant and its agents propose to engage
27 in money transmission.

28 (5) A list of other states in which the applicant is licensed to
29 engage in money transmission and any license revocations,
30 suspensions, or other disciplinary action taken against the applicant
31 in another state.

32 (6) Information concerning any bankruptcy or receivership
33 proceedings affecting the licensee.

34 (7) A sample form of payment instrument or instrument upon
35 which stored value is recorded, if applicable.

36 (8) A sample form of receipt for transactions that involve money
37 received for transmission.

38 (9) The name and address of any bank through which the
39 applicant’s payment instruments and stored value will be paid.

- 1 (10) A description of the source of money and credit to be used
2 by the applicant to provide money transmission services.
- 3 (11) The date of the applicant's incorporation or formation and
4 the state or country of incorporation or formation.
- 5 (12) A certificate of good standing from the state or country in
6 which the applicant is incorporated or formed.
- 7 (13) A description of the structure or organization of the
8 applicant, including any parent or subsidiary of the applicant, and
9 whether any parent or subsidiary is publicly traded.
- 10 (14) The legal name, any fictitious or trade name, all business
11 and residential addresses, and the employment, in the 10-year
12 period next preceding the submission of the application, of each
13 executive officer, manager, director, or person that has control, of
14 the applicant, and the education background for each such person.
15 *applicant.*
- 16 (15) A list of any criminal convictions and material litigation
17 in which any executive officer, manager, director, or person in
18 control, of the applicant has been involved in the 10-year period
19 next preceding the submission of the application.
- 20 (16) A copy of the applicant's audited financial statements for
21 the most recent fiscal year and, if available, for the two-year period
22 next preceding the submission of the application.
- 23 (17) A copy of the applicant's unconsolidated financial
24 statements for the current fiscal year, whether audited or not, and,
25 if available, for the two-year period next preceding the submission
26 of the application.
- 27 (18) If the applicant is publicly traded, a copy of the most recent
28 report filed with the United States Securities and Exchange
29 Commission under Section 13 of the federal Securities Exchange
30 Act of 1934 (15 U.S.C. Sec. 78m).
- 31 (19) If the applicant is a wholly owned subsidiary of:
- 32 (A) A corporation publicly traded in the United States, a copy
33 of audited financial statements for the parent corporation for the
34 most recent fiscal year or a copy of the parent corporation's most
35 recent report filed under Section 13 of the federal Securities
36 Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for
37 the two-year period next preceding the submission of the
38 application.

1 (B) A corporation publicly traded outside the United States, a
2 copy of similar documentation filed with the regulator of the parent
3 corporation's domicile outside the United States.

4 (20) The name and address of the applicant's registered agent
5 in this state.

6 (21) The applicant's plan for engaging in money transmission
7 business, including without limitation three years of pro forma
8 financial statements.

9 (22) Any other information the commissioner requires with
10 respect to the applicant.

11 ~~(d)~~

12 (c) The commissioner may waive any of the information
13 required under subdivision ~~(e)~~ (b) or permit an applicant to submit
14 other information instead of the required information.

15 SEC. 6. Section 2036 of the Financial Code is amended to read:

16 2036. The commissioner may impose on any authorization,
17 approval, license, or order issued pursuant to this division any
18 conditions that ~~he or she deems reasonable or necessary to the~~
19 ~~public interest.~~ *are necessary for the safety and soundness of the*
20 *licensee, or necessary to maintain or enhance consumer protection.*

21
22 SEC. 7. Section 2038 of the Financial Code is amended to read:

23 2038. Fees shall be paid to, and collected by, the commissioner,
24 as follows:

25 (a) The fee for filing an application for a license is five thousand
26 dollars (\$5,000), as provided in subdivision ~~(b)~~ (a) of Section 2032.

27 (b) The fee for filing an application for approval to acquire
28 control of a licensee is three thousand five hundred dollars
29 (\$3,500).

30 (c) A licensee shall pay annually on or before July 1, a licensee
31 fee of two thousand five hundred dollars (\$2,500).

32 (d) A licensee shall pay annually on or before July 1, one
33 hundred twenty-five dollars (\$125) for each licensee branch office
34 in this state.

35 (e) A licensee shall pay annually on or before July 1, twenty-five
36 dollars (\$25) for each agent branch office in this state.

37 (f) Whenever the commissioner examines a licensee or any
38 agent of a licensee, the licensee shall pay, within 10 days after
39 receipt of a statement from the commissioner, a fee of seventy-five
40 dollars (\$75) per hour for each examiner engaged in the

1 examination plus, if it is necessary for any examiner engaged in
2 the examination to travel outside this state, the travel expenses of
3 the examiner.

4 (g) Whenever the commissioner examines an applicant, the
5 applicant shall pay, within 10 days after receipt of a statement
6 from the commissioner, a fee of seventy-five dollars (\$75) per
7 hour for each examiner engaged in the examination plus, if it is
8 necessary for any examiner engaged in the examination to travel
9 outside this state, the travel expenses of the examiner.

10 (h) Each fee for filing an application shall be paid at the time
11 the application is filed with the commissioner. No fee for filing
12 an application shall be refundable, regardless of whether the
13 application is approved, denied, or withdrawn.

14 SEC. 8. Section 2039 of the Financial Code is amended to read:

15 2039. (a) The commissioner may by order or regulation grant
16 exemptions from this section in cases where the commissioner
17 finds that the requirements of this section are not necessary or may
18 be duplicative.

19 (b) In addition to ~~such~~ any other reports as may be required
20 pursuant to Sections 453, 454, and 455, each licensee shall, within
21 90 days after the end of each fiscal year, or within ~~such~~ any
22 extended time as the commissioner may prescribe, file with the
23 commissioner an audit report for the fiscal year that shall comply
24 with all of the following provisions:

25 (1) The audit report shall contain audited financial statements
26 of the licensee for or as of the end of the fiscal year prepared in
27 accordance with United States generally accepted accounting
28 principles and ~~such~~ any other information as the commissioner
29 may require.

30 (2) The audit report shall be based upon an audit of the licensee
31 conducted in accordance with United States generally accepted
32 auditing standards and ~~such~~ any other requirements as the
33 commissioner may prescribe.

34 (3) The audit report shall be prepared by an independent certified
35 public accountant or independent public accountant who is not
36 unsatisfactory to the commissioner.

37 (4) The audit report shall include or be accompanied by a
38 certificate of opinion of the independent certified public accountant
39 or independent public accountant that is satisfactory in form and
40 content to the commissioner. If the certificate or opinion is

1 qualified, the commissioner may order the licensee to take ~~such~~
2 *any* action as the commissioner may find necessary to enable the
3 independent or certified public accountant or independent public
4 accountant to remove the qualification.

5 (c) Each licensee shall, not more than 45 days after the end of
6 each calendar year quarter, or within a longer period as the
7 commissioner may by regulation or order specify, file with the
8 commissioner a report containing all of the following:

9 (1) Financial statements, including balance sheet, income
10 statement, statement of changes in shareholders' equity, and
11 statement of cashflows, for, or as of the end of, that calendar year
12 quarter, verified by two of the licensee's principal officers. The
13 verification shall state that each of the officers making the
14 verification has a personal knowledge of the matters in the report
15 and that each of them believes that each statement on the report is
16 true.

17 (2) For issuers and sellers of payment instruments and stored
18 value, a schedule of eligible securities owned by the licensee
19 pursuant to Section 2081.

20 (3) Other information as the commissioner may by regulation
21 or order require.

22 (d) Each licensee, not more than 45 days after the end of each
23 calendar year quarter, shall file with the commissioner a report
24 containing all of the following:

25 (1) The current address of each branch office of the licensee in
26 this state. If a branch office was opened or closed during the
27 calendar year quarter, the date it was opened or closed. If a branch
28 office was relocated during the calendar year quarter, the addresses
29 of the old and new locations and the date of relocation.

30 (2) The name of each person who acted as an agent in this state
31 of the licensee during the calendar year quarter and the address
32 for each agent branch office. If a person was appointed or
33 terminated as an agent during the calendar year quarter, the date
34 of appointment or termination. If an agent branch office relocated,
35 the addresses for the old and new locations and the date of
36 relocation.

37 (3) The total volume of activities, number of transactions
38 conducted, and outstanding money transmission obligations in
39 California under this division and in the United States in the
40 calendar year quarter categorized by type of money transmission,

1 *and whether the transmission was conducted via mobile or other*
2 *electronic application.* For money received for transmission, a
3 report of the average daily outstanding transmission liabilities in
4 California, and, if applicable, a schedule of each foreign country
5 to which money was sent, along with the total amount of money
6 sent to that foreign country in that calendar year quarter. For
7 payment instruments and stored value, a report of the average daily
8 outstanding payment instruments and stored value liabilities in
9 California in that calendar year quarter.

10 (4) Other information as the commissioner may by regulation
11 or order require.

12 (e) Each licensee shall file with the commissioner other reports
13 as and when the commissioner may by regulation or order require.

14 SEC. 9. Section 2043 of the Financial Code is amended to read:

15 2043. (a) On or before April 1, 2013, and annually thereafter,
16 each licensee shall provide its agents under contract with training
17 materials on recognizing elder or dependent adult financial abuse,
18 and how to appropriately respond if the agent suspects that he or
19 she is being asked to engage in money transmission for a fraudulent
20 transaction involving an elder or dependent adult.

21 (b) To ensure that agents that are newly appointed by licensees
22 pursuant to Section 2060 receive the training materials described
23 in subdivision (a) in a timely manner, each licensee shall provide
24 those materials to any newly appointed agent no later than one
25 month following the appointment of that agent.

26 (c) This section shall not apply to licensees that are engaged
27 solely in selling or issuing stored value pursuant to paragraph (2)
28 of subdivision ~~(o)~~ (p) of Section 2003. Licensees that engage in
29 money transmission activities pursuant to paragraph (1) or (3) of
30 that subdivision, shall be subject to this section only with respect
31 to their agents under contract for activities described in those
32 paragraphs. Additionally, this section shall not apply to licensees
33 who exclusively offer their services via an Internet Web site, *or*
34 *mobile electronic application.*

35 SEC. 10. Section 2088 of the Financial Code is amended to
36 read:

37 2088. (a) The commissioner may by regulation or order declare
38 ~~a securities rating service~~ *credit rating agency* to be an eligible
39 securities rating service if the commissioner finds the following
40 with respect to the securities rating service:

1 (1) It has been continuously engaged in the business of rating
2 securities for a period of not less than three years.

3 (2) It is competent to rate securities and is nationally recognized
4 for rating securities in a competent manner.

5 (3) It publishes its ratings of securities on a nationwide basis.

6 (b) With respect to this division “eligible securities rating
7 service” means ~~any securities rating service~~ *credit rating agency*
8 that the commissioner by regulation or order declared to be an
9 eligible securities ratings service.

10 SEC. 11. Section 2102 of the Financial Code is amended to
11 read:

12 2102. (a) Every licensee or its agent shall refund to the
13 customer within 10 days of receipt of the customer’s written request
14 for a refund any and all money received for transmission unless
15 any of the following occurs:

16 (1) The money has been forwarded within 10 days of the date
17 of receipt.

18 (2) Instructions have been given committing an equivalent
19 amount of money to the person designated by the customer within
20 10 days of the date of the receipt of the money from the customer.

21 (3) The customer instructs the licensee to transmit the money
22 at a time beyond 10 days. If the customer gives instructions as to
23 when the money shall be forwarded or transmitted and the moneys
24 have not yet been forwarded or transmitted, the licensee or its
25 agent shall refund the customer’s money within 10 days of receipt
26 of the customer’s written request for a refund.

27 (4) Refund would violate law.

28 ~~(b) In the case of money received for transmission, a receipt~~
29 ~~shall be provided by a licensee or its agent to all customers which~~
30 ~~shall be made available to the customer in English and in the~~
31 ~~language principally used by that licensee or that agent to advertise,~~
32 ~~solicit, or negotiate, either orally or in writing, at that branch office~~
33 ~~if other than English. Except when money is received for~~
34 ~~transmission for the payment of goods or services, the receipt shall~~
35 ~~either include or have attached a conspicuous statement in English~~
36 ~~and in the language principally used by the licensee or that agent~~
37 ~~to advertise, solicit, or negotiate, either orally or in writing at that~~
38 ~~branch office if other than English in a size equal to at least 10~~
39 ~~point bold type, as follows:~~

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1 RIGHT TO REFUND

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~~“You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.~~

10 If your instructions as to when the moneys shall be forwarded or transmitted
11 are not complied with and the money has not yet been forwarded or transmitted,
12 you have a right to a refund of your money.

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~~If you want a refund, you must mail or deliver your written request to _____ (name of licensee) at _____ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial Code.”~~

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~~(e) A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:~~

- ~~(1) Any and all money received for transmission, plus any fees and charges paid by the customer.~~
- ~~(2) A penalty in an amount not to exceed one thousand dollars (\$1,000). The court shall award the prevailing party costs and attorney’s fees.~~

29 *(b) If a customer’s instructions as to when the money shall be*
30 *forwarded or transmitted are not complied with and the money*
31 *has not yet been forwarded or transmitted, the customer has a*
32 *right to a refund of his or her money. If a customer does not receive*
33 *his or her refund, a cause of action under this section may be*
34 *brought in small claims court if it does not exceed the jurisdiction*
35 *of that court, or in any other appropriate court. The customer shall*
36 *be entitled to recover each of the following:*

- (1) Any and all money received for transmission, plus any fees and charges paid by the customer.*

1 (2) A penalty in an amount not to exceed one thousand dollars
2 (\$1,000). The court shall award the prevailing party costs and
3 attorney's fees.

4 SEC. 12. Section 2103 of the Financial Code is amended to
5 read:

6 ~~2103. (a) The receipt presented to each customer for money~~
7 ~~received for transmission pursuant to subdivision (b) of Section~~
8 ~~2102 shall clearly state the rate of exchange for the particular~~
9 ~~transaction, if any, the amount of commission or fees, and the net~~
10 ~~exchange after all fees and commissions have been deducted. The~~
11 ~~receipt shall also state the total amount of money presented by the~~
12 ~~customer and the total amount to be delivered to the beneficiary~~
13 ~~designated by the customer. These disclosures shall be in English~~
14 ~~and in the same language as that principally used by the licensee~~
15 ~~or any agent of the licensee to advertise, solicit, or negotiate, either~~
16 ~~orally or in writing, at that branch office if other than English.~~

17 2103. (a) In the case of money received for transmission, the
18 licensee or its agent shall give the sender or customer a receipt at
19 the time of the transaction.

20 (1) The receipt shall contain the following information, as
21 applicable:

22 (A) The name of the sender.

23 (B) The name of the designated recipient.

24 (C) The date of the transaction, which is the day the customer
25 funds the money transmission.

26 (D) The name of the licensee.

27 (E) The amount to be transferred to the designated recipient,
28 in the currency in which the money transmission is funded, using
29 the term "Transfer Amount" or a substantially similar term.

30 (F) Any fees and taxes imposed on the money transmission by
31 the licensee or its agent which are payable or have been paid by
32 the sender, in the currency in which the money transmission is
33 funded, using the terms "transfer fees" for fees and "transfer
34 taxes" for taxes, or substantially similar terms.

35 (G) The total amount of the transaction, which is the sum of
36 subparagraphs (E) and (F), in the currency in which the money
37 transmission is funded, using the term "total" or a substantially
38 similar term.

39 (H) The exchange rate, if any, used by the licensee or its agent
40 for the money transmission, rounded consistently for each currency

1 to no fewer than two decimal places and no more than four decimal
2 places, using the term “exchange rate” or a substantially similar
3 term.

4 (I) For all transmissions, other than transmissions related to
5 e-commerce transactions, the amount that will be received by the
6 designated recipient, in the currency in which the funds will be
7 received, using the term “total to recipient” or substantially similar
8 term. For transmissions related to e-commerce transactions, the
9 amount that will be received by the designated recipient before
10 any fees and taxes imposed on the money transmission by the
11 licensee or its agent and payable by the designated recipient are
12 deducted, using the term “total to recipient” or substantially
13 similar term. These fees and taxes shall be disclosed to the
14 designated recipient. The disclosure of fees and taxes payable by
15 the designated recipient, which need not be disclosed to the sender,
16 shall be disclosed as part of a separate written agreement between
17 the licensee and the designated recipient.

18 (2) (A) In addition to the disclosures set forth in paragraph
19 (1), the receipt shall either include or have attached a conspicuous
20 statement as follows:

21
22

23 *RIGHT TO REFUND*

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25 “You, the customer, are entitled to a refund of the money to be transmitted as
26 the result of this agreement if _____ (name of licensee) does not forward the
27 money received from you within 10 days of the date of its receipt, or does not
28 give instructions committing an equivalent amount of money to the person
29 designated by you within 10 days of the date of the receipt of the funds from
30 you unless otherwise instructed by you.

31

32 If your instructions as to when the moneys shall be forwarded or transmitted
33 are not complied with and the money has not yet been forwarded or transmitted,
34 you have a right to a refund of your money.

35

36 If you want a refund, you must mail or deliver your written request to _____
37 (name of licensee) at _____ (mailing address of licensee). If you do not receive
38 your refund, you may be entitled to your money back plus a penalty of up to
39 \$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial
40 Code.”

1
2 (B) *The right to refund statement set forth in subparagraph (A)*
3 *is not required to be included on receipts involving transactions*
4 *where the sender is a commercial entity, transactions that involve*
5 *entities of a type listed in subdivisions (a), (b), and (c) of Section*
6 *2010, or e-commerce transactions where the customer sends a*
7 *payment for goods or services.*

8 (3) *The receipt required by this section shall be made in English*
9 *and in the language principally used by that licensee or that agent*
10 *to advertise, solicit, or negotiate, either orally or in writing, at*
11 *that branch office, if other than English. For transactions that do*
12 *not occur in a branch office, the receipt shall be made in English*
13 *and in the language principally used by that licensee or that agent*
14 *to advertise, solicit, or negotiate money transmission, either orally*
15 *or in writing.*

16 (4) *The receipt required by this subdivision may be provided*
17 *electronically for transactions that are initiated electronically or*
18 *in which a customer agrees to receive an electronic receipt.*

19 (5) *Disclosures in the receipt required by this subdivision shall*
20 *be in a minimum eight-point font, except for receipts provided via*
21 *mobile phone or text message.*

22 (b) *If window and exterior signs concerning the rates of*
23 *exchange for money received for transmission are used, they shall*
24 *clearly state in English and in the same language principally used*
25 *by the licensee or any agent of the licensee to advertise, solicit, or*
26 *negotiate, either orally or in writing, at that branch office if other*
27 *than English, the rate of exchange for exchanging the currency of*
28 *the United States for foreign currency. If an interior sign or any*
29 *advertising is used that quotes exchange rates, it shall, in addition*
30 *to clearly stating the rates of exchange for exchanging the currency*
31 *of the United States for foreign currency, also state all commissions*
32 *and fees charged on all such transactions.*

33 (c) *At each branch office, there shall be disclosed the exchange*
34 *rates, fees, and commissions charged in English and in the same*
35 *language principally used by the licensee or any agent of the*
36 *licensee to advertise, solicit, or negotiate, either orally or in writing,*
37 *with respect to money received for transmission at that branch*
38 *office. At each branch office, there shall be signage clearly*
39 *identifying the name of the licensee as well as any trade names*
40 *used by the licensee at that branch office. In the event that a*

1 *licensee or agent conducts money transmission activity via an*
2 *Internet Web site or mobile application that is not in a branch*
3 *office, the commissioner may authorize an alternative disclosure*
4 *meeting the requirements of this section. Any Internet Web site*
5 *through which a licensee conducts money transmission shall clearly*
6 *identify the name of the licensee as well as any trade names used*
7 *by the licensee on the Internet Web site.*

8 (d) If the customer does not specify at the time the money is
9 presented to the licensee or its agent the country to which the
10 money is to be transmitted, the rate of exchange for the transaction
11 is not required to be set forth on the receipt. If the customer does
12 specify at the time the money is presented to the licensee or its
13 agent the country to which the money is to be transmitted but the
14 specified country's laws require the rate of exchange for the
15 transaction to be determined at the time the transaction is paid out
16 to the intended recipient, the rate of exchange for the transaction
17 is not required to be set forth on the receipt.

18 SEC. 13. Section 2105 of the Financial Code is amended to
19 read:

20 2105. (a) Each licensee or agent shall prominently post on the
21 premises of each branch office that conducts money transmission
22 a notice stating that:

23
24 "If you have complaints with respect to any aspect of the money
25 transmission activities conducted at this location, you may contact the
26 California Department of Financial Institutions at its toll-free telephone
27 number, 1-800-622-0620, by e-mail at consumer.complaint@dfi.ca.gov,
28 or by mail at Department of Financial Institutions, Consumer Services,
29 1810 13th Street, Sacramento, CA 95811."
30

31 (b) The commissioner may by order or regulation modify the
32 content of the notice required by this section. This notice shall be
33 printed in English and in the same language principally used by
34 the licensee or any agent of the licensee to advertise, solicit, or
35 negotiate either orally or in writing, with respect to money
36 transmission at that branch office. The information required in this
37 notice shall be clear, legible, and in letters not less than one-half
38 inch in height. The notice shall be posted in a conspicuous location
39 in the unobstructed view of the public within the premises. The
40 licensee shall provide to each of its agents the notice required by

1 this section. In those locations operated by an agent, the agent, and
2 not the licensee, shall be responsible for the failure to properly
3 post the required notice.

4 *(c) In the event that a licensee or agent conducts money*
5 *transmission activity via an Internet Web site or mobile application*
6 *that is not in a branch office, the commissioner may authorize an*
7 *alternative form of the notice required in subdivision (a).*

8 SEC. 14. Section 2124 of the Financial Code is amended to
9 read:

10 2124. (a) A licensee shall maintain the following records for
11 determining its compliance with this division for at least three
12 years:

13 (1) A record of each payment instrument or stored value
14 obligation sold.

15 (2) A general ledger posted at least monthly containing all asset,
16 liability, capital, income, and expense accounts.

17 (3) Bank statements and bank reconciliation records.

18 (4) Records of outstanding payment instruments and stored
19 value obligations.

20 (5) Records of each payment instrument and stored-value
21 obligation paid within the three-year period.

22 (6) A list of the last known names and addresses of all of the
23 licensee's agents and their branch offices.

24 (7) Any other records the commissioner reasonably requires by
25 order or regulation.

26 (b) A licensee or its agent shall maintain records of any receipts
27 provided pursuant to Section 2102 for six months or a longer period
28 of time specified in the contract between the licensee and its agent.

29 (c) The items specified in subdivisions (a) and (b) may be
30 maintained in any form of record.

31 (d) Records may be maintained outside this state if they are
32 made available to the commissioner on seven days' notice that is
33 sent in a record.

34 (e) If records not required to be maintained in English pursuant
35 to Section 456 are in a language other than English, the licensee
36 shall provide records translated into English within seven days'
37 notice that is sent in a record.

38 *(f) Each licensee shall maintain any other records required by*
39 *the commissioner.*

1 SEC. 15. Section 2175 of the Financial Code is amended to
2 read:

3 2175. The commissioner may offer *informal* guidance to any
4 prospective applicant for a license under this division, regarding
5 the conditions of licensure that may be applied to that person. The
6 commissioner shall inform any applicant that requests that guidance
7 of the minimum net worth, *and other licensing requirements*, that
8 will be required of that applicant, *based on the information*
9 *provided by the applicant concerning its plan to conduct business*
10 *under this division*, and the factors used to make that determination
11 as described in Section 2040.

12 SEC. 16. Section 2176 is added to the Financial Code, to read:

13 2176. At any time, if the commissioner deems it necessary for
14 the general welfare of the public, he or she may exercise any power
15 set forth in this division with respect to a money transmission
16 business, regardless of whether an application for a license has
17 been filed with the commissioner, a license has been issued, or, if
18 issued, the license has been surrendered, suspended, or revoked.

19 SEC. 17. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.