

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB964

Hearing Date: Monday January 30, 2012
Committee On: Banking, Commerce and Insurance
Introducer: Pahls
One Liner: Adopt the Nebraska Money Transmitters Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Gloor, McCoy, Pahls, Pirsch, Schilz, Schumacher
Nay:
Absent: 2 Senators Christensen, Langemeier
Present Not Voting:

Proponents: Senator Rich Pahls John Munn	Representing: Introducer NE Department of Banking and Finance
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Opponents:	Representing:
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Neutral: Kathy Siefken	Representing: NE Grocery Industry Association
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Summary of purpose and/or changes:

This bill, introduced at the request of the Department of Banking and Finance, enacts 44 new sections to be known as the Nebraska Money Transmitters Act and outright repeals sections 8-1001 to 8-1017, the Nebraska Sale of Checks and Funds Transmission Act. The bill provides, section by section, as follows:

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

Section 2 provides that the definitions in Sections 3 to 21 of the bill shall be used for purposes of the NMTA.

Section 3 defines "applicant" as a person filing an application for a money transmitter license.

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

Section 5 defines "control" as the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise, and provides that certain persons will be deemed to have control of a licensee. This section is based on Section 8-1001 of the existing Nebraska Sale of Checks and Funds Transmission Act (NSCA) which will be repealed if the NMTA is enacted.

Section 6 defines "controlling person" as any person in control of a licensee or authorized delegate.

Section 7 defines "Department" as the Department of Banking and Finance, which will administer the NMTA.

Section 8 defines "Director" as the Director of Banking and Finance.

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

Section 10 defines "executive officer" as a licensee's president, chairman of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Section 11 defines "key shareholder" as any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock. This comports with the definition of control in Section 5 of the bill.

Section 12 defines "licensee" as a person licensed pursuant to the NMTA.

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

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

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

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

Section 17 defines "payment instrument" as any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, which has been sold or issued. Credit cards, vouchers, letters of credit, and any instrument redeemable by an issuer for goods or services are excluded from the definition.

Section 18 defines "permissible investments" to include cash, certificates of deposit, bankers' acceptances, rated investments, government securities, and the like, with authority for the Director of the Department to authorize other securities or investments as permissible. This definition relates to Section 26 of the bill.

Section 19 defines "person."

Section 20 defines "remit," for purposes of a licensee, as a direct payment of funds to the licensee or deposit of funds to a designated financial institution. The definition excludes the reference to the Department remitting fees, costs, and fines contained in Section 43 of the bill.

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

Section 22 provides that the licensing requirements of the NMTA do not apply to federal and state governments, political subdivisions, governmental agencies, the US Post Office, financial institutions and their subsidiaries, bank holding companies which have a bank subsidiary in Nebraska, authorized delegates of financial institutions, financial institution subsidiaries and holding companies that are also financial institutions, financial institution subsidiaries and holding companies, contractors providing governmental electronic benefits transfers; and operators of specified limited payment processing systems. Other authorized delegates are excluded from the licensing requirements, but must comply with

the provisions of the NMTA which apply to money transmission transactions.

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

Section 24 provides the requirements that must be met in order for the Department to grant a money transmitter license. The standards include a net worth of fifty thousand dollars; proof that the business will be conducted honestly and fairly based on financial condition, financial and business experience, and the character and general fitness of the applicant. These standards reflect current requirements set by Section 8-1004 of the NSCA.

Section 25 requires applicants and licensees to obtain and maintain a surety bond in an amount based upon the number of locations at which it offers its services in Nebraska, up to a maximum amount of two hundred fifty thousand dollars. Section 25 allows for a pledge of securities to the Department in lieu of the surety bond requirement, and provides authority to the Department to require an increase to the bond amount for good cause. Section 25 is a combination of the bonding requirements set forth in Sections 8-1006 and 8-1008 of the NSCA.

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

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

Section 28 provides for an application fee of one thousand dollars, which is unchanged from the fee required currently for a license under Section 8-1006 of the NSCA.

Section 29 provides the Department with the responsibility of investigating license applications, allows for onsite investigations of an applicant, and reiterates the conditions for licensure found in Sections 24 and 25 of the bill. The section provides for a post-denial hearing in accordance with the Administrative Procedure Act.

Section 30 establishes the renewal requirements for a license, which include a July 1 annual renewal date, completion of a license renewal application, a fee of two hundred fifty dollars, and bond information, and a list of locations where the business is conducted. These requirements are currently in place for licenses under Section 8-1009 of the NSCA. Section 30 also requires the filing of audited financial statements, list of authorized delegates, and information on the licensee's investments, payment instruments, and business changes.

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

Section 32 provides for change of control procedures for licensees that mirror the change of control procedures set out in Section 8-1018 of the NSCA.

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

Section 34 provides record-keeping standards for licensees, and includes the requirement to maintain records for a period of five years, the authority for photographic or electronic record-keeping, and for storage of records outside of Nebraska.

Section 35 sets forth conditions that must be included in the written contract between a licensee and each of its authorized delegates, and provides that neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Director of the Department.

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

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

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

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

Section 40 provides authority to the Department to impose administrative fines up to \$5,000.00 per violation for violations of the NMTA or Departmental rules or orders. Fines and investigation costs may only be assessed after notice and hearing.

Section 41 provides that certain bad acts will constitute Class III misdemeanors (maximum: 3 months or \$500, or both; minimum: none), including the making of false statements, certifications, or entries in records, violations of the NMTA, and unlicensed money transmission. This is the same penalty contained in Section 8-1014 for violations of the current act.

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

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

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

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

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

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

Explanation of amendments:

The committee amendments make three technical changes to the bill:

1. The phrase "or authorized delegate" is removed from the definition of "controlling person" in section 6 of the bill. This phrase is superfluous as the bill makes no further reference to a controlling person of an authorized delegate.
2. The second change is to the definition of "money transmission" in section 15 of the bill. The amendment adds, at the end of the definition, the phrase "but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee." This clarifies that a money transmitter does not include an agent of a payee who receives funds on behalf of that payee.
3. The phrase "or authorized delegate" in section 25 of the bill is replaced with "in this state" to clarify that the surety bond is based upon the number of locations within this state, and not on the number of authorized delegates that the licensee has in this state.

Rich Pahls, Chairperson