

Regular Session, 2008
HOUSE BILL NO. 985
BY REPRESENTATIVE ARNOLD

ACT No. 26

1 AN ACT

2 To amend and reenact R.S. 6:1032 and 1034 and to enact R.S. 6:1038.1 and 1054, relative
3 to the sale of checks and money transmission; to provide for definitions; to provide
4 for exclusions and exemptions; to provide for temporary licenses; to provide for
5 change of control; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 6:1032 and 1034 are hereby amended and reenacted and R.S.
8 6:1038.1 and 1054 are hereby enacted to read as follows:

9 §1032. Definitions

10 For the purposes of this Chapter:

11 (1) "Agent" means a person designated by the licensee under the provisions
12 of this Chapter to sell or issue payment instruments or engage in the business of
13 money transmission on behalf of a licensee.

14 (2) "Applicant" means a person that files an application for a license under
15 this Chapter.

16 ~~(+)~~ (3) "Check" means any check, draft, money order, personal money order,
17 or other instrument for the transmission or payment of money.

18 ~~(2)~~ (4) "Commissioner" means the commissioner of financial institutions.

19 (5) "Control" means ownership of or the power to directly or indirectly vote
20 twenty-five percent or more of the outstanding voting interests of a licensee or
21 applicant and includes an individual whose ownership is through one or more legal
22 entities.

1 (6) "Currency" means the coin and paper money of the United States or
 2 another country that is designated as legal tender and circulates and is customarily
 3 used and accepted as a medium of exchange in the country of issuance.

4 ~~(3)~~ (7) "Deliver" means to deliver a check to the first person who, in
 5 payment for same, makes or purports to make a remittance of or against the face
 6 amount thereof, whether or not the deliverer also charges a fee in addition to the face
 7 amount, and whether or not the deliverer signs the check.

8 (8) "Electronic instrument" means a card or other tangible object for the
 9 transmission, transfer, or payment of money or monetary value that contains an
 10 electronic chip or strip for the storage of information or that provides access to
 11 information.

12 (9) "Executive officer" means a president, a presiding officer of the
 13 executive committee, a treasurer or chief financial officer, or any other individual
 14 who performs similar functions.

15 ~~(4)~~ (10) "Licensee" means a person duly licensed by the commissioner of
 16 financial institutions pursuant to this Chapter.

17 (11) "Location" means a place at which activity regulated by this Chapter
 18 occurs.

19 (12) "Money" or "monetary value" means currency or a claim that can be
 20 converted into currency through a financial institution, electronic payments network,
 21 or other formal or informal payment system.

22 ~~(5)~~ (13) "Money transmission" means to engage in the business of ~~selling or~~
 23 issuing payment instruments, ~~selling or issuing stored value, or receiving money or~~
 24 monetary value for transmission, including electronic transmission, to a location
 25 ~~within or outside of the United States~~ the sale or issuance of payment instruments or
 26 of receiving money or monetary value for transmission to a location within or
 27 outside the United States by any and all means, including but not limited to wire,
 28 facsimile, or electronic transfer. The term includes:

29 (a) Selling or issuing stored value or payment instruments including checks,
 30 money orders, and traveler's checks.

1 (b) Receiving money or monetary value for transmission including by
 2 payment instrument, wire, facsimile, electronic transfer, or Automated Clearing
 3 House (ACH) debit.

4 (c) Providing third-party bill paying services.

5 (14) "Outstanding" means:

6 (a) With respect to a payment instrument or stored value, a payment
 7 instrument or stored value, issued and sold in the United States directly by the
 8 licensee or sold by an agent of the licensee in the United States and reported to the
 9 licensee, that has not yet been paid by or for the licensee.

10 (b) With respect to a transmission, a money transmission for which the
 11 licensee, directly or through an agent of the licensee, has received money or
 12 monetary value from the customer for transmission but has not yet completed the
 13 money transmission by delivering the money or monetary value to the person
 14 designated by the customer or refunded the money or monetary value to the
 15 customer.

16 (15) "Payment instrument" means any electronic or written check, draft,
 17 money order, traveler's check, or other electronic or written instrument or order for
 18 the transmission or payment of money or monetary value, sold or issued to one or
 19 more persons, whether or not such instrument is negotiable. The term "payment
 20 instrument" does not include any credit card voucher, any letter of credit, or any
 21 instrument which is redeemable by the issuer of goods or services.

22 ~~(6) (16) "Person" means any individual, partnership, association, joint stock~~
 23 ~~association, trust, or corporation, but does not include the United States government~~
 24 ~~or the government of this state~~ an individual or legal entity.

25 ~~(7) (17) "Personal money order" means any instrument for the transmission~~
 26 or payment of money in relation to which the purchaser or remitter appoints or
 27 purports to appoint the seller thereof as his agent for the receipt, transmission, or
 28 handling of money, whether such instrument is signed by the seller or by the
 29 purchaser or remitter or some other person.

1 (4) A wholly owned subsidiary of a federally insured depository institution
2 that is organized under the laws of this state, another state, or the United States.

3 (5) A foreign bank branch or agency in the United States established under
4 the federal International Banking Act of 1978, 12 U.S.C. 3101 et seq.

5 (6) A person acting as an agent for an entity excluded under Paragraphs (3)
6 and (4) of this Section, to the extent of the person's actions in that capacity provided
7 that:

8 (a) The entity is liable for satisfying the money services obligation owed to
9 the purchaser on the person's receipt of the purchaser's money.

10 (b) The entity and person enter into a written contract that appoints the
11 person as the entity's agent and the person acts only within the scope of authority
12 conferred by the contract.

13 (7) A person that, on behalf of the United States or a department, agency or
14 instrumentality of the United States, or a state, parish, city, or any other
15 governmental agency or political subdivision of this state, provides electronic funds
16 transfer services of governmental benefits for a federal, state, parish, or local
17 governmental agency.

18 (8) A person that acts as an intermediary on behalf of and at the discretion
19 of a licensee in the process by which the licensee, after receiving money or monetary
20 value from a purchaser, either directly or through an agent, transmits the money or
21 monetary value to the purchaser's designated recipient, provided that the licensee is
22 liable for satisfying the obligation owed to the purchaser.

23 (9) An attorney or title company that in connection with an immovable
24 property transaction receives and disburses domestic currency or issues an escrow
25 or trust fund check only on behalf of a party to the transaction.

26 (10) A person engaged in the business of currency transportation who is both
27 a registered motor carrier and a licensed armored car company or courier company,
28 provided that the person does not engage in the money transmission business without
29 a license under this Chapter.

1 §1054. Change of control; notice; application; advisory opinion

2 A. The provisions of this Section apply to any change of control of a
3 licensee.

4 B. A person shall not directly or indirectly acquire control of a licensee or
5 a person in control of a licensee without the prior written approval of the
6 commissioner, except as provided by this Section.

7 C. A licensee or proposed person in control shall:

8 (1) Give the commissioner written notice of a proposed change of control at
9 least forty-five days before the date the proposed transaction is to be consummated.

10 (2) Request approval of the proposed change of control.

11 (3) Submit a nonrefundable fee in an amount established by the
12 commissioner's regulation.

13 D. A proposed person in control is subject to the same standards and
14 qualifications that apply to a principal of an applicant for a new license under this
15 Chapter. The commissioner may require the licensee or proposed person in control
16 to provide the same type of information, documentation, and certifications and may
17 conduct the same type of investigation the commissioner requires and conducts in
18 connection with a new license application.

19 E. The commissioner shall approve a proposed change of control if he
20 determines that the proposed person in control has the financial responsibility,
21 financial condition, business experience, competence, character, and general fitness
22 to warrant the belief that the business of the licensee will be conducted in compliance
23 with this Chapter, regulations adopted under this Chapter, and other applicable state
24 and federal law and that the change of control will not jeopardize the public interest.

25 F. If the commissioner determines that the proposed person in control fails
26 to meet the qualifications, standards, and requirements of this Chapter, he shall
27 inform the licensee and the proposed person in control in writing that the request is
28 denied and state the reasons for the denial. Such denial may be grounds for
29 revocation of the license under R.S. 6:1044. The licensee or the proposed person in
30 control may appeal the denial by filing a written request for a hearing with the

1 commissioner not later than the thirtieth day after the date the notice is mailed. A
2 hearing on the denial must be held not later than the forty-fifth day after the date the
3 commissioner receives the written request.

4 G. The provisions of Subsections B and C of this Section shall not apply to
5 the following:

6 (1) A person that acts as proxy for the sole purpose of voting at a designated
7 meeting of the security holders or holders of voting interests of a licensee or
8 controlling person.

9 (2) A person that acquires control as a personal representative, custodian,
10 curator, tutor, guardian, conservator, or trustee or as an officer appointed by a court
11 or by operation of law.

12 (3) A person exempted in the public interest by the commissioner's
13 regulation or order.

14 (4) A person that has previously complied with and received approval under
15 this Chapter or that was identified as a person in control in a prior application filed
16 with and approved by the commissioner.

17 H. A person that acquires control of a licensee by inheritance or bequest or
18 through a purchase of securities through a public offering is exempt from the prior
19 notice requirements of Paragraph (C)(1) of this Section, but the licensee must notify
20 the commissioner not later than the fifteenth day after the effective date of a change
21 of control under either of these circumstances. The licensee shall meet all
22 requirements enumerated in Subsections C through F of this Section.

23 I. Before filing an application for approval of a proposed change of control,
24 a licensee may submit a written request for an advisory opinion from the
25 commissioner to determine whether a person would be considered a proposed person
26 in control of the licensee and whether the requirements of this Section apply to the
27 proposed transaction. The request shall correctly and fully represent the facts
28 relevant to the person and the proposed transaction. If the commissioner determines
29 that the person would not be a person in control of the licensee for purposes of this

1 Section, he shall render a written advisory opinion that this Section does not apply
2 to the proposed person in control or transaction.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____