

Memorandum

To: Drafting Committee to Revise and Amend Uniform Money Services Act

From: Commissioner Tom Bolt, Chair and Commissioner Anita Ramasastry, Conference Reporter

Re: Revised Set of Amendments to Uniform Money Services Act

Date: May 13, 2004

The following amendments to the UMSA are for the Drafting Committee's review and consideration during its conference call schedule for May 17, 2004 at 5:00 p.m. EST (4:00 p.m. CDT).

1. Reciprocal licensing

At its March meeting, the Drafting Committee asked for a provision that included simple procedures for granting licensing reciprocity for money transmitter and currency exchange licensing. Two versions of Section 203 are presented for your review. The first option constitutes a new provision that has been drafted based on recommendations from the Drafting Committee. The second alternative is based on an existing reciprocity formulation contained in the Uniform Athlete Agents Act. Based on the Committee's feedback, a similar reciprocity provision could also be drafted for Article 4 (currency exchange licenses), based on the formulation (A or B) approved by the Committee.

Alternative A:

SECTION 203. RECIPROCAL LICENSING.

(a) A person engaged in money transmission that is currently licensed in at least one other state, may, with the approval of the [superintendent] and in accordance with the provisions of this section, engage in money transmission [and check cashing or currency exchange] in this state without applying for a license pursuant to Section 202 if:

(1) the state where such person is licensed has enacted the Uniform Money Services Act or has money transmission laws that are substantially similar to those imposed by the laws of this state, as determined by the [superintendent] ,

(2) any such person that engages in money transmission business in this state pursuant to this Section shall comply with the requirements of Articles 6, 7 and 8 of this [Act].

(b) A person that wishes to engage in money transmission on the basis of reciprocal licensing shall:

(1) provide the [superintendent] notice in a record of the request for a reciprocal license pursuant to this Section; and

(2) submit:

(A) a nonrefundable fee of [\$1,000] with the notice;

(B) a reciprocal application form; and

(C) a certification of license history.

(c) Before granting a person a license to operate in this state, the [superintendent] shall make such considerations, determinations and findings as required by [rule].

(d) When an application for a reciprocal license under this [section] is complete, the [superintendent] shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the [superintendent] shall approve or deny the license request within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the [superintendent] shall grant the license under this section, to take effect as of the first business day after expiration of the period.

Source: New

Comment: The current provision is broadly drafted so that it could apply to entities other than Internet payments providers in the event that they met similar criteria in terms of how they engaged in business in a given state. State regulators would be called upon to grant reciprocity to a money transmitter only if such transmitter were licensed in a state that had similar licensing requirements.

Other requirements that might be included as part of a reciprocal licensing scheme are: (i) the filing of a reciprocal application form; (ii) criminal background check of the money transmitter; (iii) certification of license history (which could give rise to criminal penalties for the filing of a false report or statement); consent to service of relevant jurisdiction; and (iv) the payment of a reciprocal licensing fee.

Alternative B:

SECTION 203. RECIPROCAL LICENSING.

A person that is licensed as a money transmitter in another State, may submit a copy of its license application and license in lieu of submitting an application in the form prescribed pursuant to subsection 202. The [superintendent] shall accept the application from the other State as an application for a license in this State if:

(1) the state where such person is licensed has enacted the Uniform Money Services Act or has money transmission laws that are substantially similar to those imposed by the laws of this state, as determined by the [superintendent]; and

(2) the application to the other State:

(A) was submitted in the other State within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current and contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and

(B) was signed by the applicant under penalty of perjury.

Source: Section 5(b) of Uniform Athlete Agents Act with modifications.

Comment: As currently drafted, Alternative B provides that a money transmitter from another state may provide the same licensing materials to the superintendent. It does not relieve the licensee from complying with the other parts of Article 2, although the Superintendent has the discretion to waive the bond and net worth requirements. The comments to Section 5 of the Uniform Athlete Agents Act state:

According to Subsection (b) provides for reciprocal use of applications in States, which have adopted the Uniform Act. The need for an agent to comply with substantially different application procedures in multiple jurisdictions is eliminated. It is the first of a number of reciprocity provisions found in the act which are intended to ease the burden placed on agents by substantially different registration requirements and to simplify enforcement of the act. Absence of reciprocity provisions in existing acts is a primary reason why the Uniform Act is needed.

2. Cooperation

Two possible cooperation provisions are included for the Committer's consideration. The first provision, prepared by Commissioner Arnold, is a broad cooperation provision, based on Section 608 of the Uniform Securities Act. Such a provision would appear as a new Section 602 to replace the existing provisions that permit joint examinations. This provision could be used in lieu of the reciprocal licensing provision, or it could be used to supplement the reciprocity in licensing for money transmitters and currency exchangers. The provision has been further revised by the Reporter and by Commissioner Dykman, the Drafting Committee's liaison to the Committee on Style.

The second provision is a modification of Section 411 of the 1968 version of the Uniform Consumer Credit Code. This provision is relatively short, but may need to be revised further to include a further list of subjects on which regulators would cooperate. If this were the case, the provision might end up replicating what is contained in Alternative A.

Alternative A

Section 602. COOPERATION.

(a) [Objective of cooperation.] Subject to section 607, The [superintendent] may, consistent with applicable laws concerning privacy and data protection, cooperate, coordinate, consult and share records and information with the [superintendent] of another State, a self-

regulatory organization, a federal or state banking and money services regulator, and a governmental law enforcement agency.

(b) [Policy to consider.] In cooperating, coordinating, consulting, and sharing records under this section, the [superintendent] may consider the desirability of:

- (1) maximizing effectiveness of regulation for the protection of customers;
- (2) maximizing uniformity in federal and state regulatory standards; and
- (3) minimizing the burdens on the business of money services, without adversely affecting essentials of customer protection.

(c) [Subjects for cooperation]. The cooperating, coordination, consultation, and sharing of records authorized by this section includes:

- (1) establishing or employing one or more designees as a central depository for filings required under this [Act] and or records required or allowed to be maintained under this [Act];
- (2) developing [and maintaining] uniform forms;
- (3) conducting a joint examination or investigation;
- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating licensing under Section 207, 303 and 403;
- (8) subject to section 607, sharing and exchanging records;
- (9) formulating rules, statements of policy, guidelines, forms and interpretative opinions and releases;
- (10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy and guidelines; and

(12) attending conference and other meetings among money services regulators, deemed necessary or appropriate to promote or achieve uniformity.

Source: Section 602 of the Uniform Securities Act with revisions.

Alternative B:

Section 602. COOPERATION.

(13) The [superintendent] is authorized and directed to consult and cooperate with other State money services regulators in maintaining compliance with this [Act]. They may jointly pursue examinations, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action.

Source: Section 411 of the Uniform Consumer Credit Code

3. Prohibition on Subdelegates

As approved by the Drafting Committee in March, a new provision has been added that prohibits an authorized delegates use of subdelegates.¹ This has been added as a new subsection (f) of Section 501 (Relationship between License and Authorized Delegate).

SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED DELEGATE.

(a) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

¹ The Drafting Committee may also choose to revisit the inclusion of a definition of subdelegate

(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this [Act]. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this [Act].

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) If a license is suspended or revoked or a licensee does not renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are in a record filed with the [superintendent] of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under [Article] 2, 3, or 4. [An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.]

(f) An authorized delegate may not use subdelegates to conduct money transmission on behalf of a licensee.

Source: New

4. Amendment of Definition of Money Transmission – Section 102(14)

At the March Drafting Committee, it appears that the Committee did not want to amend Section 102 (Definitions) to include a new definition for informal value transfer systems².

² The proposed definition of informal value transfer was as follows:

“Informal value transfer” means any system, mechanism or network of persons

This may have been because the Committee believed that Section 102(14), which defines money transmission, already included informal value transfer within the definition. In fact, the reference to informal value transfer in 102(14) was a proposed amendment. The Drafting Committee is asked to review 102(14) and to consider the proposed amendment again.

(15) “Money transmission” means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission, including informal value transfer. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

Source: Amendment derived from Section 359 of the USA Patriot Act, codified at 31 U.S.C. 5312(a)(2)(R)

5. Proposed Technical Amendments

Ezra Levine, an observer and counsel to the Non Bank Funds Transmitters Group proposed two technical amendments to UMSA.

a. Section 603(b) – removal of “responsible individuals”

SECTION 603. REPORTS.

(a) A licensee shall file with the [superintendent] within [15] business days any material changes in information provided in a licensee’s application as prescribed by the [superintendent].

(b) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, ~~responsible individuals~~, and locations in this State where the licensee or an authorized delegate of the licensee provides

that receive money or value for the purpose of making the money or an equivalent value payable to a third party in another geographic location, whether or not in the same form, outside the conventional financial institutions systems.

Source: USA Patriot Act Section 359 codified at 31 U.S.C. 5312(a)(2)(R)

money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

b. Section 701(a) – Removal of “authorized delegates”

SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold and money transmitted by the licensee ~~or its authorized delegates.~~