Legislative Analysis

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MONEY TRANSMISSION SERVICES: EXEMPT CERTAIN ENTITIES FROM LICENSURE

Senate Bill 729 (S-1) as passed by the Senate
Sponsor: Sen. Margaret O'Brien
House Committee: Financial Services
Senate Committee: Banking and Financial Institutions
Complete to 12-3-18

SUMMARY:

Senate Bill 729 would amend the Money Transmission Services Act to exclude additional types of entities from requiring licensure under the Act. Broadly speaking, the bill would allow a retailer that is not licensed under the Act to sell gift cards that are accepted at other specific stores or restaurants, rather than selling only its own gift cards. (See **Brief Discussion**, below.) The bill would also exempt the agents of certain entities from the license requirement.

The Money Transmission Services Act regulates paper and electronic money transmission services and requires a person providing those services to be licensed. Currently, the Act does not apply to such persons or services as federal, state, or local government; money transmission services provided by the U.S. Postal Service; or other entities specified in the Act, including, e.g., depository financial institutions, foreign bank offices, registered securities broker-dealers, or registered futures commission merchants.

The bill would add three more entities to which the Act would not apply.

First, under the bill, the Act would not apply to a person to the extent that it issues, sells, or distributes a ***closed-loop prepaid access device or vehicle*** (e.g., a gift card), if the funds associated with that device or vehicle do not exceed $2,000 maximum value on any day.

> ***Closed-looped prepaid access*** would mean access to funds or the value of funds that is paid in advance, may be retrieved or transferred at some time in the future through a ***device or vehicle***, and may be used only to acquire goods or services in transactions that involve one or more specific merchants or one or more specific locations. [Generally, this would refer to a prepaid gift card for a store or restaurant or online site or service—that is, a gift card that must be used at a specific place, rather than a prepaid credit card that can be more widely used.]
>
> ***Device or vehicle*** would mean an object or information, either tangible or electronic, used to provide closed-loop prepaid access or prepaid access, such as a card, code, electronic serial number, mobile identification number or personal identification number.

In addition to the definitions above, the bill would eliminate use of the defined term ***stored value device*** and add a definition for ***prepaid access***. Under the Act currently, a ***stored value device*** must be "a card or other tangible object." The change to ***prepaid access***, defined as access to prepaid funds that can be retrieved or transferred through a ***device or vehicle***, would remove the Act's condition that all forms of prepaid value must be accessed through tangible objects.

Second, the Act would not apply to a person to the extent that it is acting as an agent of a payee if the person demonstrates all of the following to the director of the Department of Insurance and Financial Services (DIFS):

- That there exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf.
- That the payee holds the agent out to the public as accepting payment on the payee's behalf.
- That payment is treated as received by the payee at the time it is received by the agent.

Payee would mean the provider of goods or services, not including money transmission services, that is owed payment of money or other monetary value from the person paying for the goods or service.

Agent of a payee would mean a person appointed by a payee to collect and process payments as the bona fide agent of the payee.

Third, the Act would not apply to a person to the extent that it provides money transmission services as an agent for an exempted bank or financial institution, if both of the following were met:

- The agency relationship is established through written agreement.
- The exempted bank or financial institution remains responsible for providing the money transmission services to its customers.

The exempted bank or financial institution referenced above include: a depository financial institution, office of an international banking corporation, branch of a foreign bank, bank holding company, bank service company, credit union service organization, corporation organized under the federal Edge Act, or, under certain conditions, a subsidiary or affiliate of a depository financial institution or of a holding company of a depository financial institution.

The bill contains an enacting section stating that the third exemption described above would apply retroactively, and the bill would give that provision a start date of July 3, 2006 (the effective date of the Money Transmission Services Act).

The bill itself would take effect 90 days after being enacted.

MCL 487.1002, 487.1003, and 487.1004

BRIEF DISCUSSION:

According to Senate committee testimony, the bill is in part intended to clarify provisions of the Act in light of DIFS readings of those provisions. Currently, the Act includes a ***stored value device*** (prepaid card) in the definition of money transmission services, but says that ***stored value device*** does not include a merchant-specific gift card (described as "a tangible object the value of which is redeemable in the issuer's goods and services"). DIFS has interpreted the quoted phrase, and thus the exception from the act, as requiring the "tangible object" to be <u>sold by</u> "the issuer," rather than <u>redeemable by</u> the issuer. In DIFS's view, in other words (using examples from the Senate testimony), Starbucks can sell a Starbucks card without needing a license under the Act, but Meijer needs a license to sell a Starbucks card (or any gift card other than a Meijer card). The bill would enable gift cards worth up to $2,000 to be sold by third-party retailers without requiring the retailer to obtain a license under the act.

FISCAL IMPACT:

Senate Bill 729 could cause a decrease in revenues of indeterminate magnitude for DIFS. By exempting additional entities from regulation under the Money Transmission Services Act, DIFS may see fewer persons obtaining licensure under the act. Revenues collected by DIFS related to licensees under the act include application fees (which can range from $3,000 to $6,600), ownership/stock transfer fees, and amendment fees. In addition, licensees are required to maintain a surety bond ranging from $500,000 to $1,500,000. According to the DIFS annual report for 2017 (the most recent year for which a report is available), there were 108 entities licensed by DIFS under the Money Transmission Services Act, but it is presently unknown how many of these entities would be exempt from licensure under Senate Bill 729.

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