



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 729 (as enacted)
Sponsor: Senator Margaret E. O'Brien
Senate Committee: Banking and Financial Institutions
House Committee: Financial Services

PUBLIC ACT 573 of 2018

Date Completed: 3-26-19

RATIONALE

Gift cards (also referred to as stored value devices or stored value cards) are sold throughout the State at a variety of retail establishments. Customers may purchase "open-loop" gift cards that are not specific to a single merchant or group of affiliated merchants and are accepted nearly everywhere, or "closed-loop" gift cards that are issued by a single merchant or a group of affiliated merchants and are redeemable for only that merchant's or affiliated group's goods or services. In many cases, gift cards are sold by the merchant that issues the card, and by various third-party sellers. The Money Transmission Services Act requires entities that sell or issue stored value devices to obtain a license from the Department of Insurance and Financial Services (DIFS). However, the Act excludes from the licensing requirement certain entities, including a person that issues a stored value device or other tangible object that is redeemable by the issuer only in goods or services. Many people believed that this exclusion applied not only to closed-loop gifts cards that are sold directly by the issuer but also to those sold by third-party sellers. However, DIFS determined that, under its interpretation, the Act excluded from licensure only closed-loop gift cards sold directly by the issuer. It was suggested that the Act should clearly exclude closed-loop gift cards sold by a third-party from the licensing requirement.

CONTENT

The bill amends the Money Transmission Services Act, which governs paper and electronic money transmission services in the State and requires a person providing those services to be licensed, to identify additional types of entities that are not be subject to the Act.

Currently, the Act defines "money transmission services" as selling or issuing payment instruments or stored value devices or receiving money or monetary value for transmission. The bill refers to "prepaid access devices or vehicles" instead of "stored value devices", and replaces the term "stored value device" with "closed-loop prepaid access or prepaid access device or vehicle" in other definitions.

"Prepaid access" means access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through a device or vehicle. The term does not include closed-loop prepaid access. "Closed-loop prepaid access" means 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 locations.

"Device or vehicle" means an object or information 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. A device or vehicle may be in either tangible or electronic form.

The Act does not apply to certain entities, such as the United States, the United States Postal Service, a state, a county, or a city. The Act also does not apply to the following types of financial institutions: a depository financial institution or its subsidiary or affiliate; an office of an international banking corporation; a branch of a foreign bank; a bank holding company or subsidiary; a bank service company; or a subsidiary or affiliate of a holding company of a depository financial institution.

Under the bill, the Act also does not apply to a person that issues, sells, or distributes a closed-loop prepaid access device or vehicle, if the funds associated with that device or vehicle do not exceed \$2,000 maximum value on any day.

In addition, the bill excludes from the Act 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 DIFS Director: a written agreement exists between the payee and agent directing the agent to collect and process payments on the payee's behalf; the payee holds the agent out to the public as accepting payments on the payee's behalf; and payment is treated as received by the payee at the time it is received by the agent.

("Payee" means a provider of goods or services, not including money transmission services, that is owed payment of money or other monetary value from the person that is paying for the goods or services. "Agent of a payee" means a person appointed by a payee to collect and process payments as the bona fide agent of the payee.)

Additionally, under the bill, the Act does not apply to a person, to the extent that it provides money transmission services as an agent for a type of financial institution listed above, if both of the following are met:

- The agency relationship between the person that is provided the money transmission services and the financial institution is established through written agreement
- The financial institution remains responsible for providing the money transmission services to its customers.

The bill will take effect on March 28, 2019.

MCL 487.1002-487.1004

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, the Act states that the term "stored value device" does not include "a tangible object the value of which is redeemable in the issuer's goods and services". For purposes of the licensing requirement, a plain language reading of the term does not differentiate between closed-loop gift cards sold directly from the issuer and those sold by a third-party seller. According to the Department, however, only gift cards sold directly from the issuer are exempt from the licensing requirement. This means, for example, that Starbucks gift cards sold at Starbucks establishments are excluded from the Act's licensing requirement, but Starbucks cards sold at Meijer are not.

The bill clarifies this issue by explicitly excluding from licensure the sale, distribution, and issuance of closed-loop gift cards by any party. This means that the sale and distribution of all gift cards will receive the same treatment, while maintaining the Act's consumer protections and the safety and security of the financial system.

Supporting Argument

According to the Department, because the Act does not explicitly exempt an agent of an exempt bank who is operating under its authority of an agency agreement, the agent must be licensed to

conduct the business of the exempt bank. (An agency agreement is a legal contract that creates a fiduciary relationship in which one party, the "principal", agrees that the actions of a second party, the "agent", bind the principal to later agreements made by the agent as if the principal had personally made the agreement.) This interpretation ignores the well-established law of agency in the Act's exemption of financial institutions. The bill clarifies that the Act does not apply to the agent of an already-exempt financial institution.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill will have an indeterminate impact on State licensure revenue under the Money Transmission Services Act. The bill creates three new exemptions from licensure as a money transmission services provider: for agents of financial institutions as described in the Act, agents of payees as defined in the bill, and entities that offer closed-loop prepaid devices (e.g., gift cards). The Department of Insurance and Financial Services does not anticipate any new loss of revenue as a result of the creation of these exemptions.

The Department currently licenses 107 entities under the Act; however, information is not available concerning the number of those licensed entities that only act exclusively as agents for payees or financial institutions. If a large number of current licensees attempt to claim an exemption under the Act, the loss of revenue may be significant. License fees under the Act range from \$3,600 to \$6,600, and surety bond requirements range from \$500,000 to \$1.5 million.

The bill will not have a direct impact on local units of government.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.