

No. 1996-79

## AN ACT

HB 2536

Amending the act of September 2, 1965 (P.L.490, No.249), entitled "An act providing for the licensing and regulation of the business of transmitting money or credit for a fee or other consideration by the issuance of money orders, by the sale of checks or by other methods; conferring powers and duties upon the Department of Banking; and imposing penalties," providing for accelerated mortgage payment providers, for exemptions, for release of reports, for examinations, for foreign applicants for license to consent to service of process upon the department, for injunctive powers and for civil money penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1 and 3 of the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, are amended to read:

Section 1. Definitions.—Unless the context clearly indicates otherwise, the following words when used in this act shall have the following meanings:

(1) "Person" includes an individual or an organization but does not include the governments of the United States or of the Commonwealth of Pennsylvania.

(2) "Transmittal instrument" means any check, draft, money order, personal money order or method for the payment of money or transmittal of credit, other than a merchandise gift certificate sold in the regular course of business by a vendor of personal property or services.

(3) "Personal money order" means any transmittal instrument in relation to which the purchaser or remitter appoints the seller thereof as his agent for the handling of the transmittal instrument or its proceeds no matter by whom such transmittal instrument is signed.

(4) "Deliver" means surrendering a transmittal instrument to the first person, who in payment for the same makes a remittance of the whole or a part of the face amount thereof, whether or not the person delivering the instrument charges a fee in addition to the face amount and whether or not he signs the same.

(5) "*Accelerated mortgage payment providers*" includes persons who receive funds from mortgagors to make mortgage payments to a lender or lenders, on behalf of those mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. This term does not include persons or entities described in section 3.

Section 3. Exemptions.—No license shall be required hereunder of

(1) banks, bank and trust companies, *credit unions*, savings banks and private banks organized under the laws of this Commonwealth; similar banking institutions organized under the laws of the United States or of any other state which are insured by the Federal Deposit Insurance Corporation; *similar credit unions organized under the laws of the United States or another state, and insured by the National Credit Union Share Insurance Fund*; and savings and loan associations and building and loan associations organized under the laws of this Commonwealth or of the United States; *or*

(2) **[incorporated telegraph companies which receive money at their offices and agencies for immediate transmittal by telegraph; or**

**(3)] agents of a person licensed under this act.**

Section 2. The act is amended by adding a section to read:

*Section 3.1. Partial Exemption.—Accelerated mortgage payment providers shall be exempt from clause (1) of section 4 and clause (2) of subsection (a) of section 6 relating to a net worth requirement and proof thereof but otherwise shall be subject to the terms and licensing requirements of this act.*

Section 3. Section 5 of the act, amended July 9, 1977 (P.L.70, No.25), is amended to read:

Section 5. Application for License.—(a) Applications for license shall be in writing under oath and in the form prescribed by the Department of Banking. Among other things, the application shall state the full name of

(1) the applicant, if an individual;

(2) each partner, if the applicant is a partnership;

(3) each trustee and officer thereof, if the applicant is a trust;

(4) each officer and director thereof, if the applicant is a corporation, joint stock association or other unincorporated association;

(5) each other business in which applicant and any affiliated companies are engaged; and

(6) the name and address of each agent or subagent conducting business in this Commonwealth.

*(b) A person applying for a new or renewal license and who is not located in this Commonwealth shall file with the application for license an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the applicant in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed in the office of the Secretary of Banking and the other shall be forwarded by the department, by certified or registered mail, return*

*receipt requested, to the last known principal place of business in this Commonwealth and to the person's principal place of business.*

Section 4. Section 10 of the act is amended to read:

Section 10. Authority of the Department of Banking.—(a) The Department of Banking shall have the right to suspend or revoke the original or any renewed license granted under this act if

(1) the licensee's bond or securities become inadequate and the licensee after notice fails forthwith to furnish an adequate bond or securities in the amount required by this act; or

(2) the licensee shall violate any provision of the act or any rule or regulation issued by the Department of Banking under authority of this act; or

(3) the licensee shall fail to comply with any demand, rule or regulation lawfully made by the Department of Banking under authority of this act; or

(4) the licensee shall refuse to permit the Department of Banking or its designated representative to make any examination authorized by this act; or

(5) if any fact or condition is discovered which, if it had been known at the time of the filing of the application for the license, would have warranted the Department of Banking in denying the application.

*(b) The Department of Banking may release reports and other pertinent information if it determines that release of such information is reasonably necessary for the protection of the public and in the interest of justice in which case the information may be released only to a representative of an agency, department or instrumentality of this Commonwealth, another state or Federal Government.*

Section 5. The act is amended by adding a section to read:

*Section 13.1. Injunctions.—If it appears to the Department of Banking based upon consumer complaints, audits or evaluations that any person has committed or continues to commit a violation of any provision of this act or of any rule or order issued by the department, then the department may apply to the Commonwealth Court for an order enjoining that person from violating or continuing to violate this act or any rule or order and for injunctive or other relief as the nature of the case may require.*

Section 6. Section 15 of the act, amended July 9, 1977 (P.L.70, No.25), is amended to read:

Section 15. Examinations by the Secretary of Banking.—The Secretary of Banking, and any person designated by him for that purpose, [annually] shall *at least once every two calendar years* investigate the business and affairs and examine the books, accounts, papers, records, documents, and files of every licensee and of every person who shall be engaged in business contemplated by this act. For this purpose the Secretary of Banking shall have free access to the offices and places of business, books, accounts, papers, records, documents, files, safes and vaults of all such persons. A person, who is not licensed under this act, shall be presumed to be engaged in business contemplated by this act if he advertises or solicits business for

which a license is required by the provisions of this act, and the Secretary of Banking, and any person designated by him for that purpose, is in such cases authorized to examine the books, accounts, papers, records, documents, files, safes and vaults of such persons for the purpose of discovering violations of this act. The cost for examinations shall be paid by the licensee, or a person who is not licensed under this act but presumed to be engaged in business contemplated by this act.

Section 7. Section 16 of the act is amended to read:

Section 16. Penalties.—Any person who directly or through another violates or attempts to violate any provision of this act shall be guilty of a misdemeanor, and shall be fined not less than two thousand five hundred dollars (\$2,500), nor more than five thousand dollars (\$5,000) or shall be imprisoned not less than six months nor more than two years in the discretion of the court. *Any person, whether licensed or not licensed under the provisions of this act, or any director, officer, employee or agent of any such person, who shall violate the provisions of this act or shall direct or consent to such violations shall be subject to a fine levied by the Department of Banking of up to two thousand dollars (\$2,000) for each offense.*

Section 8. This act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE