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BILL ANALYSIS

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House Bill 5324 (as passed by the House)
House Bill 5328 (Substitute H-3 as passed by the House)
House Bill 5329 (Substitute H-1 as passed by the House)
Sponsor: Representative Bill Huizenga (H.B. 5324)
Representative Tupac Hunter (H.B. 5328)
Representative David Palsrok (H.B. 5329)
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

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CONTENT

House Bill 5328 (H-3) would create the "Money Transmission Services Act" and House Bills 5324 and 5329 (H-1) would amend the Consumer Financial Services Act and the Code of Criminal Procedure, respectively, to do all of the following:

- Prohibit a person from providing "money transmission services" without a license under the proposed Act or a Class I license under the Consumer Financial Services Act, subject to certain exceptions.
- Specify requirements for application and licensure under the proposed Act, including financial requirements.
- Authorize the Commissioner of the Office of Financial and Insurance Services (OFIS) to establish fees for applicants and licensees under the proposed Act.
- Authorize the OFIS Commissioner to conduct examinations or investigations of licensees and their authorized delegates.
- Require licensees under the proposed Act to notify the Commissioner of changes in information provided in an initial or renewal license application.
- Require a licensee to maintain certain investments.
- Regulate agreements and relationships between licensees and their authorized delegates.

- Authorize the Commissioner to impose sanctions on licensees.
- Specify a felony penalty for certain actions.
- Require an applicant for licensure under the Consumer Financial Services Act who intended to provide money transmission services to include in the application financial statements showing a certain level of net worth.
- Require an applicant for licensure under the Consumer Financial Services Act to furnish the Commissioner with a surety bond or letter of credit in an amount determined under the proposed Act, if the applicant intended to provide money transmission services.
- Include felony violations of the proposed Act in the sentencing guidelines.

House Bill 5328 (H-3) also would repeal the Sale of Checks Act, which regulates the business of selling and issuing checks, drafts, and money orders as a service or for a fee or other consideration.

House Bills 5324 and 5329 (H-1) are tie-barred to House Bill 5328.

Under House Bill 5328 (H-3), "money transmission services" would mean selling or

issuing payment instruments or stored value devices or receiving money or monetary value for transmission. The term would not include the provision solely of delivery, online, or telecommunications services or network access.

House Bill 5328 (H-3)

Licensure

Scope. Except as otherwise provided, a person could not provide money transmission services in Michigan after December 31, 2006, without a license under the proposed Act or a Class I license issued the Consumer Financial Services Act. A person licensed under the Sale of Checks Act (which the bill would repeal) on the day before the bill's effective date could continue to provide money transmission services under that license until December 31, 2006. A license under the proposed Act would not be required for a person to act as an authorized delegate of a person licensed under the Act.

The Act would not apply to any of the following:

- The United States or a department, agency, or instrumentality of the United States.
- Money transmission services provided by the U.S. Postal Service or a contractor on behalf of the Postal Service.
- A state, county, city, or any other governmental subdivision of a state.
- A depository financial institution, office of an international banking corporation, or branch of a foreign bank; bank holding company or subsidiary; a bank service company organized under the Federal Bank Service Company Act; a subsidiary or affiliate of a depository financial institution or of a holding company of a depository financial institution, if the institution maintained its main office or a branch in Michigan; a credit union service organization; or a corporation organized under the Federal Edge Act.
- Electronic funds transfer of governmental benefits for a Federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States or a state or governmental subdivision, agency, or instrumentality of a state.

- A board of trade designated as a contract market under the Federal Commodity Exchange Act, or a person that in the ordinary course of business provided clearance and settlement services for a board of trade, to the extent of its operation as or for that board.
- A registered futures commission merchant under the Federal commodities laws, to the extent of its operation as a merchant.
- A person that provided clearance or settlement services under a registration as a clearing agency or an exemption from registration granted under the Federal securities laws, to the extent of its operation as a provider under this provision.
- An operator of a payment system, to the extent that it provided processing, clearing, settlement, or other similar services between or among people excluded from the proposed Act's licensure requirements in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearinghouse transfers, or other similar funds transfers or transactions.
- A person registered as a securities broker-dealer under Federal or state securities laws, to the extent of its operation as a registered broker-dealer.

Application. An applicant for licensure under the proposed Act would have to apply on a form and in a medium prescribed by the OFIS Commissioner. The bill describes information that would have to be on an application, including identifying information, a description of money transmission services previously provided and to be provided under the Act, criminal convictions and material litigation in which the applicant was involved in the 10 years before applying for licensure, proposed authorized delegates and locations of operation in Michigan, and various financial information.

(An "authorized delegate" would be a person that a licensee designated to provide money transmission services in Michigan on the licensee's behalf.)

Financial Requirements. At the time of filing an application for licensure, an applicant would have to provide the Commissioner with copies of its financial statements for the

most recent fiscal year and, if available, for the preceding two-year period. Those statement would have to show that the applicant's net worth exceeded \$100,000. If the applicant intended to provide money transmission services in Michigan at more than one location or through authorized delegates, however, the applicant would have to have a net worth that equaled or exceeded either the sum of \$100,000 plus an additional \$25,000 for each location or authorized delegate, or \$1 million, whichever was less. A licensee at all times would have to maintain a net worth that met those amounts for its money transmission services business.

An applicant would have to include with its application a surety bond that was issued by a bonding company or insurance company authorized to do business in Michigan and that did not expire before the license expired. The surety bond would have to be in a principal amount of at least \$500,000 and not more than \$1.5 million. The Commissioner would have to determine the amount based on the applicant's number of locations and authorized delegates in Michigan. The surety bond would have to be in a form satisfactory to the Commissioner and be payable to the Commissioner for benefit of any individuals who were Michigan residents and who were creditors or claimants of the applicant and its authorized delegates through the purchase of a payment instrument. The aggregate liability of a surety under a bond could not exceed the bond's principal amount.

Issuance or Denial. When the OFIS Commissioner received a completed application, he or she would have to investigate the applicant's financial condition and responsibility, financial and business experiences, character, and general fitness, and could reasonably conduct a similar investigation of each control person of the applicant. The Commissioner promptly would have to notify an applicant of the date he or she determined the application was complete and would have to approve or deny it within 120 days after that.

The Commissioner would have to issue a license if he or she determined that the applicant met application requirements; that the financial condition and responsibility, experience, character, and general fitness of the applicant and the experience, character,

and fitness of each control person and shareholder met the Act's requirements; that the applicant commanded the confidence of the public and warranted the belief that it would comply with the law; and that the applicant had paid required license fee.

(A "control person" would be a director, manager, or executive officer of a licensee or a natural person having the authority to participate in the direction of the management or policies of a licensee.)

Fees. By December 31 of each year, the Commissioner would have to establish a schedule of fees to be paid by applicants and licensees during the next calendar year. The fees would have to generate funds sufficient to pay, but not exceed, OFIS's reasonably anticipated costs of administering the Act.

Renewal. A license under the Act would expire on December 31 each year. A licensee could renew a license by filing an application in a form and medium prescribed by the Commission and paying a renewal fee by the December 1 preceding the renewal year.

Examination

The Commissioner could conduct an examination or investigation of a licensee or any of its authorized delegates. The Commissioner could conduct an on-site examination or investigation of certain records, including a joint examination or investigation with other departments or agencies of this State, another state, or the Federal government. The Commissioner also could accept the examination or investigation of such a department or agency, or a report prepared by a certified public accountant, instead of conducting an examination or investigation.

A licensee would have to pay the actual travel, lodging, and meal expenses incurred by any OFIS employee who traveled outside of Michigan to examine the licensee's records or investigate the licensee.

Change of Information

If there were a change in any information provided in a licensee's initial or renewal application, the licensee would have to file

the changed information with the Commissioner before the change occurred, unless the Commissioner prescribed a different deadline. A licensee would have to file a report with OFIS within three business days after it had reason to know that any of the following events occurred:

- A petition by or against the licensee under the Federal Bankruptcy Code for bankruptcy or reorganization was filed.
- A petition by or against the licensee for receivership was filed, any other judicial or administrative proceeding for the licensee's dissolution or reorganization was commenced, or a general assignment for the benefit of its creditors was made.
- A proceeding was commenced to revoke or suspend a licensee's license in Michigan, another state, or a county in which the licensee engaged in business or was licensed.
- The licensee, or an executive officer, manager, director, or control person, was charged with or convicted of a felony.
- An authorized delegate for a felony.

If there were a proposed change of control of a licensee, the licensee would have to give the Commissioner at least 30 days' written notice, request approval of the change of control, and pay a nonrefundable fee with the notice in an amount prescribed by the Commissioner. The Commissioner could require additional information of the same type required as part of the licensee's original license or renewal application, and would have to approve a request for change of control if he or she determined the person or group requesting approval had the experience, character, and general fitness to operate in a lawful and proper manner.

Investments

A licensee at all times would have to maintain permissible investments that had 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 issued or sold and money transmitted by the licensee. The Commissioner could limit the extent to which a type of investment within a class of permissible investments was considered permissible, except for money and certificates of deposit issued by a depository financial institution. The

Commissioner could allow other types of investments that he or she determined to have a safety substantially equivalent to other permissible investments. The bill specifies the investments that would be permissible under the Act.

Authorized Delegates

An agreement between a licensee and an authorized delegate would have to be in writing and require the authorized delegate to operate in compliance with the Act and other applicable law. An authorized delegate would have to remit all money owing to the licensee in accordance with the terms of the agreement.

If a license were suspended or revoked, the Commissioner would have to notify the licensee and order the licensee to notify its authorized delegates directing them to cease providing money transmission services on its behalf, and the authorized delegates immediately would have to cease providing those services.

An authorized delegate could not provide money transmission services outside the scope of activity permissible under the agreement, except activity in which it was otherwise authorized to engage. An authorized delegate would hold in escrow for the benefit of the licensee all money received from providing money transmission services, reduced by any fees the licensee owed to the authorized delegate.

An authorized delegate could not make any fraudulent or false statement or misrepresentation to a customer or licensee or to the Commissioner. An authorized delegate would have to perform money transmission services lawfully and in accordance with the licensee's policies and procedures.

All funds received by an authorized delegate from the sale of a payment instrument, less fees, would have to be held in trust for the licensee from the time the funds were received until they were remitted to the licensee. If an authorized delegate commingled any of the funds received with any other funds or property it owned or controlled, all commingled funds and other property would be impressed with a trust for the licensee in an amount equal to the amount of the funds due the licensee.

License Sanctions

Suspension, Revocation, Denial, & Receivership. The OFIS Commissioner could deny, suspend, not renew, or revoke a license, place a licensee in receivership, or order a licensee to revoke the designation of an authorized delegate if any of the following occurred:

- The licensee violated the proposed Act, a rule promulgated under it, an order or declaratory ruling issued under it, or any applicable State or Federal law.
- The licensee did not grant access to its books and records during the course of an examination or investigation by the Commissioner.
- The licensee engaged in fraud, intentional misrepresentation, or gross negligence.
- An authorized delegate was convicted of a violation of a State or Federal anti-money laundering statute or violated a rule promulgated or an order or ruling issued under the Act, as a result of the licensee's knowing or willful misconduct.
- The experience, character, or general fitness of the licensee, authorized delegate, or control person indicated that it was not in the public interest to permit the person to provide money transmission services.
- The licensee engaged in an unsafe or unsound practice.
- The licensee failed to maintain the minimum net worth required by the Act or was insolvent, suspended payment of its obligations, or made a general assignment for the benefit of its creditors.
- The licensee did not remove an authorized delegate after the Commissioner issued an order that included a finding that the authorized delegate had violated the Act.

After conducting an investigation or examination, the Commissioner could issue an order summarily suspending a license based on an affidavit by a person familiar with the facts set forth in the affidavit stating that, on information and belief, an imminent threat of financial loss or imminent threat to the public welfare existed. If the Commissioner issued a summary suspension order, an administrative law hearings examiner would have to grant a request to dissolve the order unless he or she found that an imminent threat of financial loss or

imminent threat to the public welfare existed that required an emergency action and continuation of the summary suspension order.

Cease & Desist Order. If, in the Commissioner's opinion, a licensee were engaging, had engaged, or were about to engage in a practice that posed a threat of financial loss or threat to the public welfare, or were violating, had violated, or were about to violate a law, rule, or order, the Commissioner could issue and serve on the licensee a cease and desist order. If a licensee consented to a cease and desist order or failed to appear at a hearing to determine if the Commissioner should issue an order to cease and desist, or if the Commissioner found at the hearing that the practice or violation specified in the order was established, the cease and desist order would become final.

Civil Fine. The Commissioner could assess a civil fine against a person that violated the Act, a rule promulgated or an order or ruling issued by the Commissioner under it, or any other applicable State or Federal law, in an amount up to \$10,000 per day for each day the violation continued, plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

Prohibition against being an Employee or Licensee. If, in the opinion of the Commissioner, a person had engaged in fraud or had been convicted of a criminal violation involving money laundering, the Commissioner could serve upon that person a written notice of intention to prohibit the person from being employed by, an agent of, or a control person of a licensee, or a licensee or registrant under a "financial licensing act" (as that term is defined in the Consumer Financial Services Act). If, after a hearing, the Commissioner found that any of the grounds specified in the notice had been established, the Commissioner could issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or a control person of any licensee under the proposed Act or a licensee or registrant under any financial licensing act. If the Commissioner considered that a person served a notice posed an imminent threat of financial loss to purchasers of payment instruments from a licensee, the Commissioner could serve

upon the person an order of suspension from being employed by, an agent of, or a control person of any licensee.

If a person were convicted of a felony involving fraud, dishonesty, breach of trust, or money laundering, the Commissioner could issue an order suspending or prohibiting the person from being a licensee and from being employed by, an agent of, or a control person of any licensee under the Act or a licensee or registrant under a financial licensing act.

Criminal Penalties

A person that intentionally made a false statement, misrepresentation, or false certification in any record or document filed or required to be maintained under the proposed Act, or intentionally made a false entry or omitted a material entry in a record would be guilty of a felony.

A person that engaged in criminal fraud in the conduct of its money transmission services business would be guilty of a felony.

An unlicensed person that knowingly engaged in an activity for which a license was required under the Act would be guilty of a felony.

Each of these felonies would be punishable by up to five years' imprisonment, a maximum fine of \$100,000 or both.

Other Provisions

Fee and Fine Revenue. Fees and civil and administrative fines collected under the Act would have to be paid into the State Treasury to the credit of, and used only for the operation of, OFIS.

Records Maintenance. A licensee or any person subject to the proposed Act would have to maintain certain records for at least three years. (The records would include, among others, a record of each payment instrument from the date it was issued; bank statements; records of outstanding payment instruments; and records of each payment instrument paid within the three-year period.) The records could be stored on any tangible medium or in any electronic or other medium that was immediately retrievable in perceivable form.

Confidentiality. The Commissioner, each former Commissioner, and each current and former OFIS deputy, agent, and employee would have to keep secret all facts and information obtained in the course of their duties, unless required under law to report on, take official action concerning, or testify in any proceedings regarding a licensee or licensee's activities. This would not apply to furnishing information or documents to any Federal, foreign, or out-of-State regulatory agency or to any disclosure made in the public interest by the Commissioner at his or her discretion.

Definitions. "Payment instrument" would mean any electronic or written check, draft, money order, travelers check, or other wire, electronic, or written instrument or order for the transmission or payment of money, sold or issued to one or more people, whether or not negotiable. The term includes any stored value device or facsimile. It would not include any credit card voucher, letter of credit, or tangible object redeemable by the issuer in goods or services.

"Stored value device" would mean a card or other tangible object used for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information; that is prefunded; and whose value is reduced after each use. The term would not include a tangible object whose value is redeemable in the issuer's goods or services.

House Bill 5324

An application for licensure under the Consumer Financial Services Act must be accompanied by, among other things, financial statements that are reasonably satisfactory to the OFIS Commissioner and show that the applicant's net worth exceeds certain amounts for various types of licenses. Under the bill, for an applicant that intended to provide money transmission services as defined under the proposed Money Transmission Services Act, the financial statement would have to show that the applicant's net worth exceeded \$100,000 plus an additional \$25,000 for each location or authorized delegate, as applicable, or \$1 million, whichever was less.

In addition, an applicant must file a surety bond or letter of credit in an amount not less than \$500,000. Under the bill, an applicant would have to furnish a surety bond or letter of credit to the Commissioner to secure its obligations under the Act. The principal amount of a surety body or letter of credit would have to be at least \$500,000. If the applicant intended to provide money transmission services as defined under the proposed Act, however, the applicant would have to file a surety bond that was in a principal amount as determined for a licensee under that Act (i.e., \$500,000 to \$1.5 million, as determined by the Commissioner based on the number of locations and authorized delegates).

The Consumer Financial Services Act provides that a surety bond or letter of credit must be payable upon demand by the Commissioner if he or she determines that the licensee is not conducting its activities as required under the Act and has failed to pay all money that becomes due to a person who is an installment buyer under the Motor Vehicle Sales Finance Act; Michigan residents who purchase checks under the Sale of Checks Act; loan applicants, loan servicing customers, and borrowers under the Secondary Mortgage Loan Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act; and the Commissioner. The bill would add Michigan residents who purchased money transmission services as defined in the proposed Act.

Under the Consumer Financial Services Act, if in the Commissioner’s opinion a person has engaged in fraud, the Commissioner may serve upon that person a written notice of intention to prohibit the person from being employed by, an agent of, or control person of a licensee under the Act or a licensee or registrant under a “financial licensing act”. The bill also would allow that action if, in the Commissioner’s opinion, a person had engaged in money laundering.

“Money laundering” would mean conduct by one or more people that conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate, including conduct that violates any State or Federal law that imposes a criminal penalty for money laundering.

Currently, “financial licensing act” includes the Regulatory Loan Act; the Secondary Mortgage Loan Act; the Motor Vehicle Sales Finance Act; the Sale of Checks Act; or the Mortgage Brokers, Lenders, and Servicers Licensing Act. The bill would add the proposed Money Transmission Services Act.

House Bill 5329 (H-1)

The bill would add felony violations of the proposed Money Transmission Services Act to the sentencing guidelines, as shown in Table 1.

Table 1

Violation	Felony Class & Category	Statutory Maximum Sentence
Intentional false statement, misrepresentation, or certification in record or document	E-Public trust	5 years
Criminal fraud in the conduct of money transmission services business	E-Public trust	5 years
Money Transmission Services Act license violation	E-Public trust	5 years

MCL 487.2052 et al. (H.B. 5324)
777.14p (H.B. 5329)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5324 would make the Consumer Financial Services Act consistent with the proposed Money Transmission Services Act.

House Bill 5328 (H-3) would increase the responsibilities of the Office of Financial and Insurance Services within the Department of Labor and Economic Growth to the extent that licensees regulated as money transmission services exceeded those regulated under the Sale of Checks Act, which would be repealed. The duties of the OFIS Commissioner would include reviewing license applications, setting and assessing license fees, conducting investigations, and performing enforcement activities. Fees would be determined annually at rates sufficient to fund entirely the regulation of money transmission services. In addition,

licensees would pay separately for the cost of investigations. It is estimated that 4.0 additional FTEs would be required at a cost of approximately \$350,000, funded by license fees.

Penal fines levied pursuant to the bill would go to county treasurers for distribution to public libraries. Civil fines would be retained by OFIS for the administrative expenses of the office.

The criminal penalties under House Bills 5328 (H-3) and 5329 (H-1) would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Data on misdemeanor convictions for violating the Sale of Checks Act are unavailable. An offender convicted of the Class E offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills would increase incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000.

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