

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 27, 2007

1:32 p.m.

MEMBERS PRESENT

Senator Johnny Ellis, Chair
Senator Gary Stevens, Vice Chair
Senator Bettye Davis
Senator Con Bunde

MEMBERS ABSENT

Senator Lyman Hoffman

COMMITTEE CALENDAR

SENATE BILL NO. 116

"An Act relating to the Uniform Money Services Act, to money transmission services, and to currency exchange services; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 116

SHORT TITLE: UNIFORM MONEY SERVICES ACT

SPONSOR(S): SENATOR(S) ELTON

03/14/07	(S)	READ THE FIRST TIME - REFERRALS
03/14/07	(S)	L&C, FIN
03/27/07	(S)	L&C AT 1:30 PM BELTZ 211

WITNESS REGISTER

SENATOR KIM ELTON
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 116.

MARK DAVIS, Director
Division of Banking and Securities
Department of Commerce, Community & Economic Development (DCCED)
Juneau AK

POSITION STATEMENT: Supported SB 116.

DAVID LANDSMAN, Director
National Money Transmitters Association
POSITION STATEMENT: Supported SB 116.

EZRA LEVINE, Partner
Howery Law Firm
Money Services Round Table
Washington D.C.,
POSITION STATEMENT: Supported SB 116.

MR. ALLEN MOORE, Manager and Owner
Cemerlang Financial Services
Juneau AK
POSITION STATEMENT: Supported SB 116.

ACTION NARRATIVE

CHAIR JOHNNY ELLIS called the Senate Labor and Commerce Standing Committee meeting to order at [1:32:04 PM](#). Present at the call to order were Senators Stevens, Davis, Bunde and Ellis.

SB 116-UNIFORM MONEY SERVICES ACT

[1:33:24 PM](#)

CHAIR ELLIS announced SB 116 to be up for consideration and that it had a CS.

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SENATOR KIM ELTON, sponsor of SB 116, said he wanted to make a few points. One is that the bill has support from both large and small money transmitting companies, the Association, the Department of Commerce, Community & Economic Development (DCCED), and from consumer advocates. It has implications for the industry, the consumer and homeland security.

SENATOR ELTON apologized for bringing a 28-page bill to them, but said it is based on model legislation that has been used elsewhere. It insures the safety and soundness in the financial institutions used by Alaskans who don't use banks. Most of the bill is taken up with the mechanics of regulation like licensing background checks, investigations, and filing reports. As with any business regulation, it is going to be self-supported by the businesses. This does not have a cost to the general fund.

SENATOR ELTON said SB 116 addresses two industries that pose a risk for money laundering - money transmission and currency

exchange. Money transmission also poses a risk for terrorist financing.

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The only difference between this bill and the model legislation is that the model also covers check cashing, which is another industry with its own dynamics. He left it out because it doesn't impact homeland security and can be dealt with later if people want.

He said the federal government encourages states to work with it on these businesses by licensing money service businesses (MSB). In fact, the Federal Bank Security Act that was updated after 9/11 makes it a federal felony to transmit money without a license in states that require one. So if this passes, violations will be federal felonies.

SENATOR ELTON said several Alaskan businesses do transmit money now, but are not registered with the federal Financial Crimes Enforcement Network (FINCEN). State licensure will require money transmitters to get registered so they don't run afoul of the federal government. It ensures law enforcement coordination to make sure these businesses aren't abused by people who avoid banks because they don't want the scrutiny of bank examiners. The bill insures safety and soundness for consumers through its bonding and net worth requirements.

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SENATOR ELTON described how Juneau is familiar with money transmitting companies because a typical user might be someone who is on one of the foreign flagged tour ships who wants to wire money to their home country and their families.

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SENATOR BUNDE mentioned that illegal aliens doing money laundering has been in the news lately and he asked if this bill impacted those situations.

SENATOR ELTON replied that he didn't think his bill affected that issue, but he encouraged him to ask the people who are in the business. It's possible that it might concern how banks deal with money transmitters and bank accounts for them. Now, the federal government requires banks to know about, not just the person that has the account, but the people that are doing business with the account-holder. So, there are some issues around the banks that are not addressed in the bill.

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SENATOR STEVENS said the Kodiak Western Union has seen a lot of money transfers by foreign nationals who work in Kodiak canneries who send money home and he asked if they would lose that business.

SENATOR ELTON replied that Western Union would speak to that later on, but the only concern they had is that there is no cap on the fee service. He explained that all of the state's regulatory boards have fees that have to fully support the activities of the board. Western Union would prefer to see just a flat fee instead of one that could slide up or down depending on what the expenses of the board were. But they had worked through that and supported the bill.

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MARK DAVIS, Director, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), supported SB 116 and testified that it provides for efficient regulation. It doesn't require companies that are licensed in other states to apply for licensure in Alaska; so it doesn't require duplication of licensing and allows them to work through their affiliates in the state. The larger company would become responsible for the actions of the affiliate.

He said this system allows two essential things. It lets the Division of Banking and Securities monitor compliance with various laws and it also has some consumer protection issues that are not in the uniform act. A provision requires each licensee to state, up front, to the customer what charges they make when using the service. Currently, Alaska does not have any regulations on any of these businesses and this would be a first step.

MR. DAVIS supported the idea of making sure each business is following the various federal and/or state laws that apply to their services. The Act allows for the division to do examinations and to do an examination upon receiving a complaint. It would not be too burdensome; a bank examiner would have to look at the records that are being kept by the particular company. Money transmitters are already registered with the IRS and should be registered with the Department of Treasury. However, as Senator Elton noted, not all are so registered in the State of Alaska. "So this bill would clean up that situation, which would be very positive," he said and that currently Alaska does not have any regulations and this is a first step.

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SENATOR STEVENS asked what the charges would be to send money from Kodiak to Philippines.

MR. DAVIS replied that the fee is a percentage of the transaction and the currency exchange rate, which changes from day to day because of currency fluctuations. The idea in this bill is that everyone would have to post their charges up front so people know upfront what they are.

SENATOR STEVENS asked if he understood correctly that the cost of the transaction won't change, but the rates will be posted. This should create competition and allow consumer choice.

MR. DAVIS replied that was correct.

SENATOR STEVENS asked what "no cap for financial services" means.

MR. DAVIS answered that the department's fiscal note indicates it needs half of an investigator, which is how they are working with payday lending right now, which is a similar type industry. He thought the cost of the regulation to the division would be equal to the fees and they can be adjusted by regulation so that would be monitored.

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SENATOR BUNDE asked what problem this legislation solves and if there has been abuse.

MR. DAVIS replied that he hadn't heard of abuse with the charges and he has not had that many complaints. He has a predatory lending hotline, but hadn't received many calls on money transmitters. But he knows from the pay lending bill that the posting of the charges has led to competition and he thought that would occur here. The other thing he noted is the federal Money Laundering Suppression Act of 1194 urged the states to enact uniform laws to license and regulate money transmitters and currency exchange businesses and this uniform act in SB 116 would conform to that. "There is a definite advantage to money laundering suppression by this bill."

SENATOR STEVENS asked how this would protect a consumer from a company going into bankruptcy.

MR. DAVIS replied that SB 116 has a bond provision that would provide some protection. Second, the division could also make sure that the companies that are applying for the licensing have the business acumen and financial ability to be in this business.

SENATOR BUNDE asked if he said only a handful of people do this business in Alaska.

MR. DAVIS replied that he thought this would affect about 30 companies. Western Union is here, but that would be licensed through its national affiliate. It's good to have as many companies as possible.

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SENATOR BUNDE mentioned the \$80,000 fiscal note. He asked if that would be passed on to the customer.

MR. DAVIS replied yes.

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SENATOR ELTON said four people do this business in Juneau plus Western Union and the fiscal note was predicated on 40 companies around the state, if he recalled correctly.

MR. DAVIS added that it should be based on 30 - 40 statewide based on the division's informal survey.

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DAVID LANDSMAN, Director, National Money Transmitters Association, said it was founded in 1999 to defend the concerns of state license remittance companies. That is the only requirement they have for membership - to be state licensed - except in the case of Mr. Allen Moore who is not licensed because he operates in Alaska.

He explained that Mr. Moore was very interested in getting this license bill passed because of the banking problem. And that's the main problem the Association wants to solve right now, "because it's a matter of survival."

MR. LANDSMAN said the question has been raised - what is the linkage between the licensing bill and the banking problem. The linkage is that the professionalization of this industry is a prerequisite to them getting the kind of recognition and respect that would help them get their bank accounts back. He explained there are no such things as a right to a bank account in this

country and a bank has the right to choose who to do business with and who not to. The only trouble is they have chosen not to do business with any money service businesses. This has led to real distortions in the market that impact the consumer, not to mention the existence of above-board money transmitters.

This issue has a lot of implications for national security and our country's anti-money laundering (AML) laws. He thought it was the first prerequisite for keeping track of these transactions. The federal government made a conscious decision to leave it up to the states; very few states are not doing it right now. In the states that are licensing people there is still the problem of getting shut out of the bank accounts. "So, this is really just the first step on the road to getting our industry professionalized both in substance and in public perception."

The banks are not the villains in this, he said, and if there is a villain, it can be said to be overzealous regulators. He recognized that the problem is coming from the federal level. The state banking charter is at issue here. These banks are examined by the state, but it is also examined by the FDIC, which is one of the five federal banking regulators is one of the prime culprits. In their execution of their job, there is a lot of anecdotal evidence to say a false standard is being applied. The standard they say should be applied is that a bank can have as many MSB customers as they want as long as they have systems that are adequate to handle the AML risk. In fact, what is happening is that is not the only standard. Banks are being told to close MSB accounts because they have too many of them. Unfortunately that concept of concentration of risk is being transplanted from credit to compliance and it's being misapplied, he said. Further, most banks have made the decision these days not to do business with MSBs because it's just not worth it.

MR. LANDSMAN said he understands this might not be the correct forum for this kind of discussion and he appreciated the committee's forbearance in listening.

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He believed the need for licensing is not gauged by the number of consumer complaints alone. Hawaii did a study looking at whether or not there were sufficient consumer complaints to pass its bill and it concluded there weren't enough. Yet, a couple of months later its bill passed. It's for the reason of being able to at least identify who is doing these kinds of businesses and

fulfilling the state's role. Unfortunately it can be looked at as an unfunded mandate, but this is the role the federal government was hoping the states would pick up. An entire industry is getting denied banking accounts.

MR. LANDSMAN said he represents mostly small to medium sized money transmitters who are honest and hard working who serve a real important need in society.

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EZRA LEVINE, Partner, Howery Law Firm, Washington D.C., represents the Money Services Round Table, which is composed of the large national non-bank money transmitters. They include American Express, Western Union, Money-Gram, and others that are licensed in all of the states and under the 47 states that now have laws similar to SB 116.

MR. LEVINE said he helped write the National Conference of Commissioners on Uniform State Laws (NCCUSL) model and testified in favor of it as well as the competing model of the Money Transmitter Regulators' Association, which are amazingly similar. He said they were the only ones who are complying with the anti-money laundering record keeping and reporting regulations under the U.S. Bank Secrecy Act. They have both a soundness and safety focus and make sure that the companies are complying with the Bank Secrecy Act as it was enhanced in 2001 by the Patriot Act.

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MR. LEVINE explained that consumer protections in bankruptcy are not just a bond, but the principal protection is that every money transmitter includes not only folks that transmit funds but those who issue transmission instruments, like travelers' checks and money orders, as well. He said that grocery stores also issue money orders and anybody who is licensed has to have a pool of eligible securities - like cash and government bonds - equal to all the outstanding customer obligations of the licensee. A statutory trust is imposed on those assets to deal with bankruptcy issues. Not only is the bond available, but the permissible investments and failure to have permissible investments or to lie about it is a felony under the state law. "So, it's a very, very, good protection." Further, he said, the new disclosure provision for receipts and fees and for the FX rates are a marvelous tool for the consumers. He said that Hawaii has the very same law that is being proposed for Alaska and the costs of regulation have not increased costs to the consumer.

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SENATOR STEVENS asked how much more it would cost to send \$1,000 to the Philippines if this law passed.

MR. LEVINE suspected the costs would be fairly deminimis because all the companies in all the states pool their costs.

SENATOR STEVENS reiterated that it didn't seem that the consumer would get much protection out of this bill.

MR. LEVINE replied that the theory is that the state government is insuring to the maximum extent practicable that a system is in place to insure that when someone buys a money order, which is just piece of paper with "money order" written on it, that it is good, even in the face of bankruptcy. Virtually all the states are doing it now.

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SENATOR BUNDE asked if Mark Davis supported this bill.

MR. DAVIS replied yes.

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MR. ALLEN MOORE, Manager and Owner, Cemerlang Financial Services, LLC, said he transfers money exclusively for crewmen on the tour ships and supported SB 116. It would be advantageous to the industry and the people he serves if money transmitters were regulated by the state. It would put a license on the wall and give customers confidence that a body of law is behind it. As part of the licensing he would become bonded or he would purchase a CD and pledge it to the state.

CHAIR ELLIS asked him who he represents.

MR. MOORE replied that Cemerlang represents a company out of New York for the Philippines. His network is for Indonesia and he didn't anticipate a fee increase.

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SENATOR BUNDE asked what the banking problem is.

MR. MOORE replied that Cemerlang was banking for over eight years with Key Corp, but Key Corp decided it didn't want to service MSBs and other banks have made that same decision. People in the industry can't get accounts; it's a real problem. Money can't be sent home.

SENATOR STEVENS asked if he gets bonded, would he have to bond himself or would the larger firm's bond cover him.

MR. MOORE replied that he is his own company and registered with the federal Financial Crimes Enforcement Network (FINCEN) as a money transmission company. No bond is required and he doesn't have one; rather he has a stock portfolio that he keeps in the corporate name.

SENATOR STEVENS asked if he would have to purchase a bond if this passed.

MR. MOORE replied yes, or a CD and pledge it to the state.

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CHAIR ELLIS mentioned the Alaska Public Interest Research Group's (AKPIRG) letter from Steve Cleary in support of SB 116.

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SENATOR ELTON commented that he thought the most important thing is what this bill does for the consumer. They are getting the knowledge that they are dealing with a State of Alaska licensed company that has to follow rules and that is not a fly-by-night business. That, along with the bond or CD, gives a certain amount of comfort when you're handing over a substantial amount of money.

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CHAIR ELLIS said the bill would be held for a further hearing. There being no further business to come before the committee, he adjourned the meeting at [2:18:57 PM](#).