



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

December 13, 2016

TO ALL LICENSED MONEY TRANSMITTERS REGULATED BY THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF BANKING AND SECURITIES:

On November 3, 2016, Governor Wolf signed into law as [Act 129 of 2016](#), P.L. 1002, House Bill 850 (P.N. 3932), an Act amending the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, further providing for title of act, for definitions, for license required and for exemptions; repealing provisions relating to partial exemption; further providing for qualifications for a license, for application for license, for fee, financial statement and security, for investigation issuance of license, for term of license, for renewal of licenses and for authority of the Department of Banking; providing for suspension, revocation or refusal and for licensee requirements; further providing for agents; repealing provisions relating to hearing and appeal, injunctions, rules and regulations and examinations by the Secretary of Banking; and further providing for penalties.

Act 129 will create significant changes in the way you conduct your business in Pennsylvania. The provisions of the Act become effective 60 days after the November 3 enactment. Therefore, all licensees must be compliant with the provisions of Act 129 by the January 2, 2017 effective date. Below you will find key provisions regarding the new act which fall under the Department's jurisdiction.

A money transmitter is a person that transmits money by means of a transmittal instrument for a fee or other consideration with or on behalf of an individual.

Act 129 clarifies the scope of the licensure requirement by specifying that the Money Transmitter Act (Act) is intended to regulate transactions done on behalf of individuals. The statute is a consumer protection statute and does not apply to transactions initiated on behalf of persons that are not individuals. Thus, business to business transactions are not within the scope of the Act.

While Act 129 specifies that it does not apply to money transmission between business entities in connection with commercial contracts, it reiterates that as a consumer protection statute it does apply to those contracts if they involve money transmission for personal or household purposes involving individuals.

Regarding the coverage of the Act, Act 129 specifies that all government entities are not persons under the Act. Previously, only the United States of America and the Commonwealth were not persons within the scope of the Act. That has been expanded to specify a person does not include the Federal Government or the government of the Commonwealth or any other state, or any political subdivisions or instrumentalities of such governments. Thus, all of these governmental entities are not persons and thus not covered by the Act when transmitting money.

Further along the lines of exempting governmental transactions, Act 129 specifically notes that an agent of a Federal, State or local government agency is exempted from the scope of the Act to the extent that such agents are disbursing government benefits. Government benefits are defined as money or monetary value given to an individual by a Federal, State or local government agency for purposes of financial assistance, including unemployment compensation, supplemental nutritional assistance program benefits and Social Security benefits.

Along with these previous limitations to coverage of the Act, Act 129 has expanded the enumerated licensure exemptions.

Previously, exemption from licensure under the Act was limited to banking institutions, agents of banking institutions and agents of licensees. This has been expanded to include as previously noted, the agent of a government; and the agents that receive payments from individuals on behalf of persons that are creditors, public utilities or providers of goods or services.

In order for an agency relationship to exist and the agency exemptions to apply the agent must be appointed pursuant to a written agreement between the agent and the person on whose behalf the agent is acting. The written agreement shall contain all of the following provisions:

- (1) There is consent by the agent and the person on whose behalf the agent is acting.
- (2) The agent is acting on behalf of the person employing the agent's service for the transmission of money.
- (3) The agent is subject to the control of the person on whose behalf the agent is acting, meaning that the licensee or exempted person takes complete financial responsibility for the money being transmitted from the moment an individual initiates the transmission of money until the intended recipient receives the transmitted money.
- (4) There is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the person on whose behalf the agent is acting.
- (5) Receipt of funds by the agent is deemed receipt of funds by the person on whose behalf the agent is acting.
- (6) The agent may not provide money transmission outside the scope of activity permissible under the written agreement between the agent and the person on whose behalf the agent is acting except to the extent that the agent is licensed itself or operating as an agent for another person.
- (7) Individuals doing business with the agent are aware that the agent is working on behalf of the person on whose behalf the agent is acting.

An exemption from licensure cannot be claimed if the agreement is not in writing and does not contain all seven conditions since the person cannot be considered an agent under the Act and thus licensure is required by the person as a Money Transmitter.

Act 129 has clarified the requirements needed for the grant of a license under the Act and the authority of the Department in issuing licenses.

First and foremost in order to ensure that consumers are protected from marginal operators it requires that an applicant for licensure have and maintain a tangible net worth of at least \$500,000. Tangible net worth means that all intangible assets as determined by generally accepted accounting principles are excluded from the net worth calculation. Thus, items such as trademarks, non-compete agreements, customer lists or relationships, goodwill, licensing agreements, and similar items cannot be considered when calculating whether an applicant satisfies the \$500,000 threshold.

The Act specifies that a license may be denied if an applicant or a director, officer, partner, employee, agent or ultimate equitable owner of ten percent or more of the applicant, has been convicted of a crime of moral turpitude or felony in any jurisdiction within the previous seven years; has had a license or license application denied, not renewed, suspended or revoked by the department, another Commonwealth licensing agency or any other Federal or State regulatory agency; has been the subject of an order by a regulatory agency; has violated the Act or a regulation of the Department; has any outstanding debt to the Commonwealth or any Commonwealth agency; or does not possess the financial responsibility, character, reputation, integrity and general fitness to command confidence of the public to warrant the belief that the money transmission business will be operated lawfully, honestly, fairly and within the legislative intent of this act and in accordance with the general laws of this Commonwealth.

In addition to the denial of a license, the Department may now impose conditions on the issuance of a license. If the department determines that conditions imposed upon a licensee have not been fulfilled, the department may take any action authorized under this act against the licensee that the department deems necessary.

The application fee is increased to \$5,000. This application fee applies to initial applications and all applications relating to renewal of an existing license.

The surety requirements under the Act have been modified. These changes have been made in order to ensure the safety of the monies consumers entrust to a licensee. First, all licensees are now required to obtain bonds and may no longer pledge securities in lieu of posting a bond.

While the surety requirement remains at \$1,000,000 as in the existing law, in order to protect the public, the Department may, after an examination and a consent agreement or order, require an additional bond in an amount up to the average daily outstanding balance of money received for transmission in this Commonwealth during the thirty days preceding the department's requirement plus an additional ten percent of the amount of the average daily outstanding balance. In addition to the bond having to be for the use of the Commonwealth and of any person or persons who may have a cause of action against the licensee for failure to carry out the

terms of any transmittal instrument which the licensee shall have issued and who were residents of the Commonwealth of Pennsylvania at the time the cause of action arose, the bond must also be payable for any administrative costs incurred by or fines imposed by the department.

Act 129 has incorporated the existing authority and practices of the Department regarding the examination and regulation of licensees under the Act. Previously, these existing practices and regulatory authority were authorized pursuant to other Commonwealth law and authority. This incorporation pulls these practices and procedures into the Act for reference when a licensee is consulting the Act for guidance.

Act 129 reiterates that a licensee may not be renewed or may have their license suspended or revoked by the Department if a licensee or director, officer, partner, employee or owner of a licensee has:

- (1) Made a material misstatement in an application or any report or submission required by this act or any department regulation, statement of policy or order.
- (2) Failed to comply with or violated any provision of this act or any regulation or order promulgated or issued by the department under this act.
- (3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the money transmission business.
- (4) Been convicted of or pleaded guilty or nolo contendere to a crime of moral turpitude or felony.
- (5) Permanently or temporarily been enjoined by a court of competent jurisdiction from engaging in or continuing conduct or a practice involving an aspect of the money transmission business.
- (6) Become the subject of an order of the department or any other state regulatory agency denying, suspending or revoking a license.
- (7) Become the subject of a United States Postal Service fraud order.
- (8) Failed to comply with the requirements of this act to make and keep records prescribed by regulation, statement of policy or order of the department, to produce records required by the department or to file financial reports or other information that the department by regulation, statement of policy or order may require.
- (9) Demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license.
- (10) Become insolvent, meaning that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature or the applicant or licensee is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

Act 129 specifies that a licensee must operate in a safe and sound manner, ensuring that its practices and the practices of its agents, if applicable, do not create the likelihood of material loss, insolvency or dissipation of assets, or otherwise materially prejudice the interest of

individuals who use the licensee's services to transmit money; Comply with all applicable Federal or State laws and rules pertaining to the business of money transmission; Provide the department with written notice within ten days of any change in status, including address, ownership, directors, officers, contact information and the reason for the change and Maintain at all times the bond and tangible net worth required by this act.

Licenses must now register all of its agents who engage in the business of money transmission involving individuals who are located in this Commonwealth. The Department has adopted the Uniform Authorized Agent Reporting (UAAR) functionality through the Nationwide Multistate Licensing System & Registry (NMLS). Please visit the [NMLS Resource Center](#) for instructions regarding the UAAR onboarding program.

Licenses must also file a report setting forth such information as the department shall require concerning the money transmission business conducted by the licensee. Licenses who fail to file the required report by the date required by the department may be subject to a penalty of one hundred dollars (\$100) for each day after the due date until the report is filed. As announced in September, the Department has adopted the NMLS Money Services Businesses (MSB) Call Report for this reporting function. The initial MSB report is required to be filed in NMLS within 45 days after the first quarter end (May 15, 2017). All updates and resources will be posted on the MSB Call Report page on the [NMLS Resource Center](#).

Act 129 increases the penalty for any person who directly or through another violates or attempts to violate any provision of this act. Previously a criminal violation of the Act was a misdemeanor. A criminal violation is now a felony, and the minimum fine was increased from \$2,500 to \$5,000. The maximum criminal fine has been increased from \$5,000 to \$50,000 and the term of imprisonment from not less than six months nor more than two to not more than seven years in the discretion of the court. The Administrative penalty for a violation of the provisions of the act was increased from \$2,000 to \$10,000 for each offense.

Conclusion

The enactment of the Act creates significant change for Department-regulated licenses. The Department is committed to working with you to ensure the smoothest-possible transition to operation under the new provisions of Act 129.

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the Act and is therefore not inclusive of all of the provisions, conditions, exceptions, and details. It is critically important for you to read the actual Act and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

Licensee questions regarding the changes to the law should be addressed to the Licensing Office of the Non-Depository Deputate at (717) 787-3717 by email at RA-AskLicensing@pa.gov or via the Department's website at www.dobs.pa.gov.

We here at the Department look forward to working with you in order to seamlessly implement this new legislation.

Sincerely,

/s/ Robin L. Wiessmann
Secretary