

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 372

An Act to amend and reenact §§ 6.1-370 through 6.1-375 and 6.1-377 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-378.4, relating to money order sales and money transmission services.

[H 2161]

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-370 through 6.1-375 and 6.1-377 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-378.4 as follows:

§ 6.1-370. Definitions.

As used in this chapter:

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Money order" means a check, traveler's check, draft, or other instrument for the transmission or payment of money; *or monetary value whether or not negotiable.*

"Money transmission" means receiving money ~~from a person~~ *or monetary value* for transmission by wire, facsimile, electronic means or other means *or selling or issuing stored value.*

"Money transmitter" or "licensee" means a person who is authorized pursuant to this chapter to engage in the business of selling money orders or the business of money transmission, or both.

"Principal" means any person who, directly or indirectly, owns or controls a ten percent or greater interest in any form of business organization.

"Stored value" means monetary value that is evidenced by an electronic record.

§ 6.1-371. License required; exceptions.

No person shall engage in the business of selling money orders or, on or after January 1, 1995, engage in the business of money transmission, ~~for a fee or other consideration whether or not the person has a location in the Commonwealth,~~ unless such person obtains from the State Corporation Commission a license issued pursuant to this chapter. However, the provisions of this chapter shall not apply to: (i) the United States, or any department, instrumentality or agency thereof; (ii) this Commonwealth, or any political subdivision thereof; (iii) a bank, trust company, savings institution or credit union ~~authorized to do business in this Commonwealth operating under the laws of the United States or any state or territory thereof; or~~ (iv) a telegraph company ~~subject to regulation by the Commission the net worth of which company is at least one million dollars;~~ (v) a private security services business, licensed under § 9-183.3, that transports or offers to transport money; ~~or~~ (vi) ~~any person who receives money for transmission as an incident to the conduct of another business.~~

Any person who was licensed as a money order seller under this chapter on January 1, 1994, shall be issued a license as a money transmitter without the necessity of an additional application and fee. However, if such a licensee is to engage in the business of money transmission after January 1, 1995, the Commission may require the licensee to obtain expanded bond coverage for the protection of purchasers of money transmission services. *This chapter shall be construed by the Commission for the purpose of protecting, against financial loss, citizens of the Commonwealth who purchase money orders or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the Commonwealth.*

§ 6.1-372. Same; application; balance sheet required; filing fee; surety bond.

A. Applications for a license shall be made on forms furnished by the Commission and shall set forth the name and address of the applicant, a description of the manner in which and the locations at which it proposes to do business, and such additional relevant information as the Commission requires. The application shall be accompanied by such *audited* financial statements as the Commission may require, a filing fee of \$500 and, except as provided in subsection B, a surety bond satisfactory to the Commission in the principal amount as determined by the Commission but not less than \$25,000 *nor more than one million dollars*, and conditioned as the Commission may require for the benefit of purchasers, payees, and holders of money orders sold by the licensee and its agents in this Commonwealth, and for the benefit of purchasers of money transmission services.

B. As an alternative security device and in lieu of the surety bond required by subsection A, a license applicant may deposit with a financial institution designated by such applicant and approved by the Commission for that purpose, cash, stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this Commonwealth, or of a city, county, town or other political subdivision of this Commonwealth, in an aggregate amount, based upon the principal amount or market value, whichever is lower, of not less

than the amounts required by the Commission pursuant to subsection A. Such cash or securities shall be deposited and held to secure obligations established in subsection A, but the licensee shall be entitled to (i) receive all interest and dividends thereon and (ii) substitute, with the Commission's prior approval, other securities for those deposited. The Commission may also direct the licensee, for good cause shown, to substitute other securities for those deposited.

C. The security device required by this section shall remain in place for five years after a licensee under this chapter ceases money order sales or money transmission activities within this Commonwealth. However, the Commission may permit the security device to be reduced or eliminated prior to that time to the extent the amount of such licensee's payment instruments outstanding in this Commonwealth are reduced. The Commission may also permit any such licensee to substitute a letter of credit, or such other form of security device as may be acceptable to the Commission, for the security device in place at the time the applicant ceases money order sales or money transmission activities in this Commonwealth.

§ 6.1-373. Same; annual fee; renewal.

If a license is denied, the filing fee shall not be refunded. If a license is issued, the filing fee shall constitute the license fee for the period ending on the following June 30. Each licensee shall pay to the Commission annually on or before July 1 a license fee of ~~\$250~~ \$750 and shall file by each April 15 an annual report on a form prescribed by the Commission *and containing such information as the Commission may prescribe, including audited financial statements*. All fees shall be paid into the state treasury and credited to the "Financial Institutions Special Fund - State Corporation Commission."

§ 6.1-374. License required; conditions prerequisite to issuance; revocation for inability to meet obligations; reinstatement after revocation.

A. The Commission shall not issue a license unless it is of the opinion that the applicant will be able to and will perform its obligations to purchasers of money transmission services and purchasers, payees, and holders of money orders sold by it and its agents in this Commonwealth, and that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, and principal stockholders are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law and regulations. *Each licensee under this chapter shall at all times have a net worth of not less than \$100,000, or a higher amount not to exceed one million dollars as determined by the Commission, calculated in accordance with generally accepted accounting principles. Any person who was licensed as a money order seller under this chapter on July 1, 2001, shall have three years from that date to comply with the minimum net worth requirement of this section.*

B. 1. The Commission may revoke a license, after hearing and not less than ten days' notice, if it reasonably determines that the licensee may be unable to perform its obligations, or that the licensee has willfully failed without reasonable cause to pay or provide for the payment of any of its obligations; but shall reinstate the license if the licensee proves that it has performed all of its obligations.

2. The Commission may also revoke a license, after hearing and not less than ten days' notice, upon any of the following:

- a. Any ground for denial of a license under this chapter;
- b. Any violation of the provisions of this chapter or regulations promulgated by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;
- c. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
- d. Entry of a judgment against such licensee involving fraud, misrepresentation, or deceit;
- e. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;
- f. Refusal to permit an investigation or examination by the Commission;
- g. Failure to pay any fee or assessment imposed by this chapter; or
- h. Failure to comply with any order of the Commission.

§ 6.1-375. Selling without license; examination of books by Commission; penalty.

Any person required by this chapter to have a license who sells money orders or engages in the business of money transmission without first being licensed shall be guilty of a Class 3 *1* misdemeanor. The Commission shall have authority to examine the books and records of all persons engaged in the sale of money orders or engaged in the business of money transmission either directly or through agents and shall report violations of this chapter to the attorney for the Commonwealth of the city or county in which such violation occurs. The Commission ~~shall~~ *may* make an examination of the books and records of each licensee as often as it is deemed to be in the public interest, and shall adjust the surety bond as it may deem necessary *in accordance with § 6.1-372 A. If the Commission determines, based on the licensee's financial statements and past history of operations in the Commonwealth that an examination is unnecessary, the examination may be waived by the Commission. The examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The Commission, in lieu of an examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm.* Every licensee so examined shall

pay all costs and expenses associated with such examination *within thirty days of assessment. For the foregoing purposes, the person designated by the Commission to make such examinations shall have authority to administer oaths, examine under oath in the course of such examinations, the principals, officers, directors, partners, and employees of any person required to be licensed by this chapter and compel the production of documents.*

§ 6.1-377. License not required of agents of licensee.

A licensee may conduct its business ~~at one or more locations within this Commonwealth and~~ through or by means of such agents as the licensee may ~~from time to time~~ designate or appoint. No license under this chapter shall be required of any agent of a licensee, or other person, firm, corporation or other entity selling money orders or money transmission services of a person licensed under this chapter.

§ 6.1-378.4. Civil penalties.

In addition to the authority conferred under § 6.1-374, the Commission may impose a penalty not exceeding \$1,000 upon any person licensed or required to be licensed under this chapter who the Commission determines, in proceedings commenced under its Rules of Practice and Procedure, has violated any of the provisions of this chapter or rules promulgated hereunder. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-371, each money order sale or money transmission transaction shall constitute a separate violation.