

**ORDER NO. 2018-024**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE:</b>
	§	
<b>PAYCHEX, INC.</b>	§	<b>THE BANKING</b>
	§	<b>COMMISSIONER OF TEXAS</b>
	§	
<b>ROCHESTER, NEW YORK</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**CONSENT ORDER**

On this day, in the matter of Paychex, Inc. (“Paychex” or “Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

1. Paychex is a corporation organized under the laws of the State of Delaware and is headquartered in Rochester, New York.
2. The Texas Department of Banking (“Department”) has jurisdiction over Paychex and the subject matter of this proceeding pursuant to Texas Finance Code (“Finance Code”) Chapter 151 (“Chapter 151”). The Commissioner has the authority to issue this Consent Order (“Order”) and to assess administrative penalties pursuant to Finance Code §§ 151.706 and 151.707.
3. Paychex has been properly notified of its right to an administrative hearing under Chapter 151.
4. The undersigned representative of Paychex has full authority to enter into and bind Paychex to the terms and conditions of this Order.
5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.301, 151.302, 151.702, 151.706, and 151.707.
6. Any violation of this Order could subject Paychex to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this Order

diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.

7. For purposes of this proceeding, Paychex knowingly and voluntarily waives:
  - a. Service upon Paychex of this Order;
  - b. The right to present defenses to the allegations in this proceeding;
  - c. Notice and hearing prior to imposition of this Order;
  - d. The filing of proposed findings of fact and conclusions of law;
  - e. The issuance of a proposal for decision by an administrative law judge;
  - f. The filing of exceptions and briefs with respect to such proposal for decision;
  - g. Any review of this Order by the Texas Finance Commission; and
  - h. Judicial review of this Order as provided by Texas Government Code § 2001.171 et seq., and any other challenge to the validity of this Order.
8. Paychex and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Paychex admitting or denying any violations of law or regulations. This Order does not constitute an admission by Paychex that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
9. The Commissioner has considered this matter and finds as follows:
  - a. Paychex offers payroll processing services whereby it transfers funds from employers (“Customer”) to employees in several different ways, including direct deposit through ACH into the employees’ accounts and placing funds on prepaid cards.
  - b. Paychex provides preparation and timely filing of quarterly and year-end payroll tax returns, as well as electronically transfers its customers’ funds to the applicable taxing

- authorities. As part of these transfers, Paychex electronically collects payroll taxes from Customer's bank accounts before remitting the funds to the appropriate agency.
- c. Paychex's garnishment processing service facilitates deductions from employees' paychecks, forwards payments to third-party agencies, including those that require electronic payments, and tracks the obligations to fulfillment.
  - d. On or about November 8, 2017, the Department received a report that indicated Paychex had potentially engaged in money transmission in the State of Texas since at least 1990. Department staff sent a letter via certified mail to Paychex, inquiring of the business activities being conducted.
  - e. On or about December 29, 2017, Respondent mailed a letter to the Department to explain Respondent's business model.
  - f. On or about February 22, 2018, the Department mailed a letter to Respondent's outside counsel advising that to perform the transactions described in Items 9(a), 9(b), and 9(c) above, Respondent requires a money transmission license in Texas.
  - g. On or about March 29, 2018, Respondent submitted an Application for a Temporary Money Transmission License for the Department's consideration. The Department issued the Temporary Money Transmission License on May 21, 2018.
  - h. Under Finance Code § 151.301(b)(4), money transmission means "the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location." The Finance Code defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code § 151.302(b). In receiving consumers' funds and

compensation in exchange for a promise to make the funds available to various third-party entities, Paychex is engaging in the business of money transmission.

- i. Finance Code § 151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
  - j. As described above, Paychex is conducting money transmission in Texas. Until Paychex received its temporary license on May 21, 2018, the Department had not licensed Paychex; Paychex is not an authorized delegate of a license holder; Paychex is not excluded from licensure under Chapter 151; and Paychex has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Paychex is in violation of Finance Code § 151.302.
  - k. As required by Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Respondent’s compliance history, and Respondent’s good faith in attempting to comply with Chapter 151.
  - l. Based on these findings and based on the representations made by Paychex as to the volume of transactions and length of time it has been conducting an unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$212,500 is appropriate.
10. Paychex has agreed to comply with the terms that are set out in the Order below.
  11. Nothing in this Order shall prohibit Paychex from obtaining a money transmission license from the Department in the future.

12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Paychex that come to the attention of the Department. However, nothing herein shall be construed to limit Paychex's right to contest any future finding or determination of non-compliance.

### **ORDER**

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Within 10 days of the Effective Date of this Order, Paychex will cause to be delivered to the Department a check or wire transfer made payable to the Texas Department of Banking in the amount of \$212,500 as payment of the administrative penalty.
2. Paychex, or a subsidiary thereof, will fulfill all the requirements to obtain a license to conduct money transmission in Texas as detailed in Chapter 151. In the event the license application for Paychex or its subsidiary is (i) suspended pursuant to Finance Code § 151.204, (ii) determined abandoned pursuant to 7 Texas Administrative Code § 33.13(g)(1), or (iii) denied pursuant to Finance Code § 151.205, Paychex will do the following:
  - a. Within 15 days of the Department's notification to Paychex or its subsidiary of said suspension, abandonment or denial, notify its existing Texas customers that it will cease providing money transmission services to them. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
  - b. Within 60 days of the Department's notification to Paychex or its subsidiary of said suspension, abandonment or denial, cease and desist from engaging in the unauthorized business of money transmission in Texas and have returned to its customers all customer funds held by Paychex or its subsidiary; and

- c. Within seven days of achieving full compliance with this paragraph, Paychex must confirm to the Department in writing that it has ceased all unlicensed activities in Texas.

**EFFECTIVE DATES**

This Order against Paychex is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 6<sup>th</sup> day of September, 2018.

/s/ Charles G. Cooper \_\_\_\_\_

Charles G. Cooper

Banking Commissioner of the State of Texas

**AGREED AS TO FORM AND SUBSTANCE:**

Paychex, Inc.

/s/ Frank Fiorille

By: Frank Fiorille  
Vice President – Risk Compliance  
and Data Analytics

Date: 9/12/18

**APPROVED AS TO FORM:**

/s/ Stephanie E. Kalahurka  
Stephanie E. Kalahurka  
Fenimore, Kay, Harrison & Ford, LLP  
Counsel for Paychex, Inc.

Date: 9/12/18

/s/ Chris W. Bell  
Chris W. Bell  
Assistant General Counsel  
Texas Department of Banking  
Date: 9/7/18