

**Texas Department of Banking
Testimony**

**Testimony Presented To The Committee On Financial Institutions Texas
House Of Representatives**

Date: March 29, 1999

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H.B. 2320 by Cuellar
AMENDMENTS TO THE CURRENCY EXCHANGE ACT

HISTORY OF THE CURRENCY EXCHANGE ACT

Federal and state regulators initially focused their oversight of money laundering activities primarily through restrictions on traditional banking operations. As a result of this heightened scrutiny, criminal elements resorted to the use of nonbank financial institutions to introduce laundered funds into the monetary system. Due to concerns about this activity, the Legislature passed the Currency Exchange Act in 1991 (the "Act"). The Act's two primary means of detecting illegal money laundering activity are licensing and record-keeping requirements.

A few years after the enactment of the Act, it became apparent that considerable money laundering was being conducted by the simple act of driving it across the border. Consequently, in May of 1995, the Legislature amended Chapter 153 of the Texas Finance Code to include currency transportation as an activity that requires licensure under the Act. At that time, the only exemption from the licensing requirement applied to armored cars holding a permit under Tex. Civ. Stat. Ann. Art. 911b, §6-dd. In the same legislative session, but in other law, the Legislature eliminated the different licensing requirements for types of motor carriers and repealed the armored car provision. Two years later, the regulation of motor carriers was codified into the Texas Transportation Code. The Texas Transportation Code does not now include a specific provision relating to armored cars.

EXPLANATION OF THE AMENDMENTS

Section 1. This section clarifies existing law that owners and operators of unmanned teller machines (ATMs) must have a license under the Act unless they are exempted. Law enforcement officials have become concerned that ATMs may be utilized to launder large amounts of cash. Prior to 1996 and the ability to surcharge customers for using the machines, nonbank owners of ATMs were unknown. Currently, there are a number of independent service operators who transmit information and funds through ATMs without a currency transmission license. In addition, absent regulatory oversight, there is no enforcement authority to compel compliance with state law requiring the disclosure of surcharges.

Section 2. This section amends several definitions in the Act. "Currency exchange, transportation, or transmission business" specifies that offering currency services for a fee constitutes a regulated activity. This addition clarifies the Department's position that a person

may not advertise currency services without a license. The definitions of "currency transmission" and "currency transportation" correct an inadvertent deletion of the terms "or its equivalent" from the Act in 1995. As a result of this deletion, some previously licensed transporters have surrendered their licenses and transport only money orders. This permits persons who do not wish to provide identifying information to funnel money out of the United States without complying with record-keeping requirements applicable to money transmitters. In addition, because there is no oversight of this activity, consumers may be at risk if they utilize unlicensed companies to transport monetary instruments.

Section 3. This section provides rulemaking authority to establish criteria for exemptions.

Sections 4 and 5. These sections clarify current language regarding net worth requirements and operations at more than one location.

Section 6. This section establishes criteria that the Banking Commissioner may consider in reducing the bonding requirement of a licensee. In some cases, the minimum bonding requirement of \$25,000 is excessive considering the nature and volume of the business. This proposed change would give the Banking Commissioner flexibility in dealing appropriately with this issue.

Section 7. This section identifies exemptions to the Act and includes the misplaced exemption for attorneys and title companies in real estate closings. Section 14 repeals that exemption. The section adds the authority for the Banking Commissioner to add an exemption by rule if the Commissioner finds that the licensing of such person is not necessary or appropriate to achieve the objectives of the chapter. The exemption for currency transportation is clarified to reflect the original legislative intent to exclude only an armored car or courier company licensed under the Private Investigators and Private Security Agencies Act, Article 4413 (29bb), Tex. Civ. Stat. Ann.

Section 8. This section clarifies the authority of the Commissioner to pursue an enforcement action against a person who is not a license holder to cease and desist from violations of law. Additionally, the section permits the Commissioner to utilize the same procedure for any person who violates the Act by deleting the requirement that the Commissioner present findings to a licenseholder at a meeting before taking any action. Licenseholders have sufficient notice and an opportunity to contest any formal action by the Commissioner through administrative procedures applicable to the Department.

Section 9. This section authorizes the Commissioner to establish requirements of the content of advertising by rule.

Section 10. This section clarifies the authority of the Commissioner to require that the books and records of a license holder must be made available for examination at a specified location.

Section 11. This section permits information sharing with a regulator from a foreign country.

Section 12. This section provides a statutory defense to a person acting on request of a law enforcement official to facilitate an investigation conducted under the laws of this state.

Section 13. This section, similar to section 8, eliminates the pre-enforcement meeting and permits seizure of assets and records of a person upon a finding that they have violated the Act or other regulation applicable to currency exchange, transportation, or transmission business.

COMMITTEE SUBSTITUTE:

The Committee Substitute changes Section 4, subsection (5) to require that the minimum net worth of \$25,000 multiplied by the number of locations pertains only to currency transmission business. This is a clarification of current law and current practice. The original bill contained a drafting error.