

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1320 (Bauer-Kahan)
Version: June 10, 2021
Hearing Date: June 22, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Money transmission: customer service

DIGEST

This bill requires licensed money transmitters to provide a customer service telephone number to consumers and to reply within 24 hours to a consumer who contacts the money transmitter for customer service issues.

EXECUTIVE SUMMARY

In recent years, businesses providing money transmission have gone from fairly niche to nearly ubiquitous: the rise of apps like Venmo and Cash App means that millions of people have access to a money transmission business with the touch of a screen. The ease of access to money transmission services has been accompanied by an increase in consumer reliance on money transmission services for essential, and immediate, money transfer needs; as a result, errors in money transmission can cause significant harm to consumers who may, for example, not be able to pay rent or other bills. While money transmission services are currently licensed and regulated by the state, there is currently no law requiring money transmission businesses to provide contact information on its website – which, for apps, is likely the only way to interact with the business – or respond timely to customer contacts. This bill would fill that gap by requiring a licensed money transmission business to prominently display a customer contact phone number on its website and in any written communication with a customer, and to provide an individualized response to any consumer complaints within 24 hours.

This bill is sponsored by the author and supported by the California Reinvestment Coalition, Consumer Attorneys of California, and Consumer Reports. The bill is opposed by the Electronic Transactions Association and The Money Services Round Table. This bill passed out of the Senate Banking and Finance Committee with a 9-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Money Transmission Act (the Act), which provides for the regulation and licensure of money transmission businesses in order to protect the interests of consumers of money transmission businesses in this state. (Fin. Code, div. 1.2, §§ 2000 et seq.)
- 2) Defines, for purposes of the Act, the following relevant terms:
 - a) "Licensee" is a corporation or limited liability company licensed under the Act. (Fin. Code, § 2003(m).)
 - b) "Money transmission" is (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission. (Fin. Code, § 2003(p).)
 - c) "Payment instrument" is a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable; it does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate. (Fin. Code, § 2003(s).)
 - d) "Receiving money for transmission" or "money received for transmission" is receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means; the term does not include sale or issuance of payment instruments and stored value. (Fin. Code, § 2003(u).)
 - e) "Stored value" is monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services; it does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value. (Fin. Code, § 2003(x).)
- 3) Prohibits a person from engaging in the business of money transmission in this state, or from advertising, soliciting, or holding itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under the Act. (Fin. Code, § 2030.)
- 4) Exempts from the licensure requirement specified entities including federal agencies and departments, the United States Postal Service, FDIC-insured commercial and industrial banks, entities performing electronic transfer of governmental benefits, and persons registered as securities broker-dealers under federal law. (Fin. Code, § 2010.)

- 5) Imposes certain requirements on money transmission businesses to protect consumers, including:
 - a) Requiring every licensee or its agent to refund to the consumer within 10 days of receipt of the customer's written request for a refund and all money received for transmission, except under specified circumstances. (Fin. Code, § 2012.)
 - b) Requiring every licensee or its agent to give the customer receipt at the time of the transaction that includes specified information, including a statement informing the consumer of the right to request a refund in writing and the licensee's obligation to provide that refund within 10 days of receipt of the request. (Fin. Code, § 2103.)
 - c) Requiring every licensee or its agent to post prominently on the premises of each branch office a specified notice stating that a consumer may contact the California Department of Business Oversight (CDBO) with complaints, and providing the CDBO's phone number, email, and mailing address. (Fin. Code, § 2105.)¹

This bill:

- 1) Requires a licensee to display prominently on its website a telephone number through which a customer may contact the licensee for customer service issues.
- 2) Requires, in any written communication from a licensee to a customer related to money transmission, the licensee to include a telephone number through which a customer may contact the licensee for customer service issues.
- 3) Requires a licensee to reply within 24 hours to a customer who contacts the licensee for customer service issues; the reply must be individualized to address the customer's concern or connect the customer with resources to address their concern.

COMMENTS

1. Author's comment

According to the author:

Money transfer applications have become a lifeline in this pandemic, for everything from small businesses to mutual aid. We must ensure that these customers are protected in a minimally-regulated field of digital services. AB 1320 requires these services to post and communicate a phone number customers can call to get help. This protects vulnerable users by providing them a way to quickly resolve any issues, and maintain access to critical funds.

¹ The Department of Business Oversight has been renamed the Department of Financial Protection and Innovation; SB 577 (Limón, 2021) would correct the reference in the statute.

2. This bill provides protections for consumers of money transmission services

Before the internet, money transmission was largely an in-person endeavor. A consumer would go to the Western Union (or other company) storefront and place their transfer order with an employee; if something went wrong, the consumer could return to the store, speak to a person to figure out what went wrong, and hopefully resolve the issue.

Now, however, consumers can transmit money without ever interacting with another human being, and with less effort than it takes to play a game of Candy Crush. Online money transmission apps that provide peer-to-peer payments, such as Cash App, PayPal, and Venmo, have exploded in popularity in the United States, particularly during the COVID-19 pandemic.² These online-only businesses have an advantage over brick-and-mortar services because they have lower overhead costs, and can spend less on marketing because their users often do the legwork of bringing on new members – it is in users’ best interest to make sure their friends and family are all using the same app.³

Many of these apps offer “digital wallet” services in addition to transferring money, which allow the user to store their money in the app rather than transferring it to an outside bank account. Evidence suggests that digital wallet apps are being adopted by unbanked customers,⁴ who overall are likely to have low income, have less education, and be a member of an ethnic minority group.⁵ While digital wallets connected to money transmission apps do provide some benefits to unbanked persons, such as the ability to electronically receive payments and a place to store money electronically rather than in cash, digital wallets come with their own downsides: cybersecurity risks, a lack of ATM access or means to obtain cash, and, importantly for this bill, a lack of customer service.

The problem is familiar to anyone who has tried to make a customer complaint online: it can be nearly impossible to find a customer service phone number that will lead to a conversation with an actual person. The difficulty of contacting customer service is annoying when the complaint is about a recreational online purchase; for money transfer service problems, the difficulty of contacting customer service can result in a

² Bary, *Venmo and Square’s Cash App were going gangbusters before the pandemic – now they’re doing even better*, Marketwatch (Jun. 20, 2020), <https://www.marketwatch.com/story/venmo-and-square-cash-were-going-gangbusters-before-the-pandemicnow-theyre-doing-even-better-2020-06-18> [last visited Jun. 17, 2021].

³ *Ibid.*

⁴ Walk-Morris, *Will apps like PayPal and Venmo make financial inequality worse?* Vox.com (Apr. 7, 2021), <https://www.vox.com/22367985/paypal-venmo-financial-inequality-unbanked-underbanked> [last visited Jun. 17, 2021].

⁵ Board of Governors of the Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2019* (May 2020), available at <https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-banking-and-credit.htm> [last visited Jun. 17, 2021].

person missing an essential payment or financial deadline – especially for the unbanked.

This bill would resolve the problem of consumers being left without recourse for a potential scam or an error in a money transmission by adding three new commonsense requirements for money transmission businesses licensed in the state:

- A licensee must prominently display on its website a telephone number through which a customer can contact the licensee about customer service issues.
- A licensee must, in any written communication from a licensee to a customer related to money transmission, include a telephone number through which a customer can contact the licensee about customer service issues.
- A licensee must reply within 24 hours to a consumer who contacts the licensee for customer service issues; the reply must either be individualized to address the customer's concern or connect the customer with resources to address their concern.

These measures are intended to give consumers the information they need to contact money transmission businesses and resolve scams and errors promptly.

3. Federal law does not prohibit California from regulating money transmission businesses doing business in the state

The bill's opponents have suggested that this bill, by imposing a 24-hour personalized response requirement, could run afoul of federal law. This does not appear to be the case.

Federal law requires a person who owns or controls a money transmitting business to register the business with the Secretary of the Treasury.⁶ The law expressly states, however, that money transmitting businesses "remain subject to State law" and that the registration requirements "shall not be construed as superseding any requirement of State law relating to money transmitting businesses."⁷ The opponents' concern that California's ability to regulate their businesses *as money transmission businesses* thus appears unfounded. Similarly, while federal law provides baseline requirements for electronic funds transfers, the law expressly provides that a state law is not inconsistent with those requirements and therefore not superseded "if the protection of such law affords any consumer is greater than the protection afforded by" the federal law."⁸ Thus, to the extent this bill provides California consumers with greater consumer protection rights than those available under federal law, federal law expressly permits California to enact those additional protections.

⁶ 31 U.S.C. § 5330(a)(1).

⁷ *Id.*, § 5330(a)(3).

⁸ 15 U.S.C. § 1693q.

The opponents also suggest that certain *types* of customer issues could implicate other federal regulations aimed at specific financial matters of federal concern. For example, the federal money transmitting business registration requirement discussed above arises within the context of tracing illicit monetary transactions, e.g., transactions for the purpose of money laundering, financing terrorism and other criminal activity, or to evade taxes.⁹ To the extent a money transmission service has flagged a transmission because it implicates potentially illegal activity, or otherwise has to conduct an investigation that will take more than 24 hours to resolve, the money transmission service need only say so in the individualized response. The bill does not require that every issue be totally resolved within 24 hours; it requires only that consumers, who have entrusted their money to these services, receive an individualized response that *either* (1) resolves the issue, or (2) provides them with specific instructions on how to follow up and seek resolution, including a telephonic option. This bill therefore does not appear to pose an impediment where money transmission services are required – by federal law or by the complexity of the issue – to conduct an investigation that needs more than 24 hours of attention.

Even though federal law does not preempt or preclude the bill as currently drafted, the author is working with the bill’s opponents to potentially refine the scope of certain terms and requirements in response to their concerns.

4. Arguments in support

According to bill supporter Consumer Reports:

Consumer Reports (CR) has a long history of working to improve payments protections for consumers, and has conducted deep dives into a number of financial services. In 2018, Consumer Reports rated peer-to-peer payment services, including Square’s Cash App and Venmo. Users in CR focus groups of peer-to-peer services told CR that they expected the company with whom they interacted – such as Square or PayPal – to fix problems and make them whole. CR research into provider practice showed that this is not necessarily the case. Consumers can often be left struggling to resolve issues, and people may have difficulty in finding help tools in mobile payments wallets or apps. Moreover, our research found that few service providers make telephone contact numbers publicly available, leaving consumers frustrated...

The gap between consumer expectations and provider practices would not be worrying if problems were extremely rare, or if payments protections particularly robust, but they are not...

Since the pandemic, consumers are increasingly reliant on digital financial tools to manage household funds. Loss of funds can be catastrophic to families

⁹ *Id.*, § 5311; *see* 31 C.F.R. § 1022.320.

experiencing financial hardship. People reliant on [money transmission apps] to move money should not have to search for help, and providers should be required to do more to prevent people from falling victim to scammers when seeking assistance. AB 1320 is a step towards ensuring that providers live up to consumer expectations to provide assistance in the event that users encounter difficulties.

5. Arguments in opposition

According to bill opponent Electronic Transactions Association:

We are strongly concerned about AB 1320's proposed requirements that a licensee "reply within 24 hours to a consumer who contacts the licensee for customer service issues" and impose specific obligations with respect to the reply. These prescriptive requirements for the timing and nature of a response to any outreach to the licensee conflict with other regulatory obligations of licensees and in many cases could inadvertently result in consumers receiving inferior assistance with resolving matters. We continue to be in dialogue with Assemblymember Bauer-Kahan regarding the 24-hour standard that's prescribed in the bill and the various customer service needs that may necessitate longer timeframes.

We are [also] concerned that AB 1320's proposed requirements to provide an "individualized" reply within 24 hours of being contacted by a licensee for "customer service issues" would create significant compliance and logistical challenges for licensees and could disrupt processes currently in place to address customer concerns and issues relating to the licensee's provision of money transmission services. The requirement to provide an individualized reply to any contact received by the licensee relating to "customer service issues" is broad, vague, and inconsistent with current nationwide standards of regulation for licensed money transmitters. We are hoping to continue the dialogue with Assemblymember Bauer-Kahan on when individualized responses should be required, and what would constitute an individualized response.

SUPPORT

California Reinvestment Coalition
Consumer Attorneys of California
Consumer Reports

OPPOSITION

Electronic Transactions Association
The Money Services Round Table

RELATED LEGISLATION

Pending Legislation: SB 577 (Limón, 2021) clarifies that the Department of Financial Protection and Innovation is responsible for oversight of money transmission services and removes the obligation for the controlling department to make an annual report to the relevant Legislative committees including a summary of its activities with relation to the program. SB 577 is pending before the Assembly Banking and Finance Committee.

Prior Legislation:

AB 1864 (Limón, Ch. 157, Stats, 2020) among its provisions, renamed CDBO as Department of Financial Protection and Innovation (DPFI) and transferred all powers and duties of the former CDBO to the new DFPI.

AB 1489 (Calderon, 2019) would have established the Virtual Currency Act and exempted persons engaged in money transmission and licensed under the Money Transmission Act from its scope. AB 1489 died in the Assembly Banking and Finance Committee.

AB 1326 (Dababneh, 2015) would have exempted digital currencies from the Money Transmission Act. AB 1326 died in the Senate Banking and Financial Institutions Committee.

AB 2209 (Dickinson, Ch. 499, Stats. 2014) extended the Act to clearly apply to money transmission businesses conducted via an internet website or mobile application and excluded from the Act's scope entities that act as merchants' agents in a payor/payee context.

PRIOR VOTES:

Senate Banking and Finance Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Banking and Finance Committee (Ayes 12, Noes 0)
