

HB 2780 -- COMMERCIAL TRANSACTIONS (Hicks)

COMMITTEE OF ORIGIN: Special Committee on Public Policy

This bill revises and creates provisions relating to commercial transactions.

PROHIBITION OF CENTRAL BANK DIGITAL CURRENCY (Section 34.700, RSMo.)

The bill prohibits public entities from accepting payments using any central bank digital currency. Furthermore, public entities are prohibited from participating in any test of central bank digital currency by any Federal Reserve branch. A central bank digital currency is defined as a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is made directly available to a consumer by such entities. The term includes a digital currency, a digital medium of exchange, or a digital monetary unit of account issued by the United States Federal Reserve System, a federal agency, a foreign government, a foreign central bank, or a foreign reserve system, that is processed or validated directly by such entities.

MONEY TRANSMISSION MODERNIZATION ACT OF 2024 (Sections 361.900 and 361.903)

This bill establishes the "Money Transmission Modernization Act of 2024" (MTMA) which replaces existing money transmission laws and ensures that states coordinate in areas of regulation and licensing to eliminate unnecessary regulatory burden, protect the public from financial crime, and protect customer funds. The bill provides for uniformity with respect to the subject matter with other states that have enacted the MTMA.

DEFINITIONS AND EXEMPTIONS (Sections 361.906 and 361.909)

The MMTA contains several definitions as described in the bill, including "money", "outstanding money transmission obligations", "control", "average daily money transmission liability", "multistate licensing process", "passive investor", "payment instrument", and "payroll processing services". The MTMA eliminates technical differences between states that make compliance and reporting difficult for companies operating in multiple states.

This bill sets forth exemptions from money transmitter licensing to promote consistency among states. The exemptions include, but are

not limited to an operator of a payment system that provides processing, clearing, or settlement services between persons who are exempted under the bill; a person appointed as an agent of a payee to collect and process a payment from a payer to the payee for goods and services, other than money transmission itself; a person that acts as an intermediary between an entity and sender; the United States government; state, county, city or governmental agency of subdivision; federally insured depository financial institution; and person registered as a securities broker-dealer under federal or state securities laws.

DIRECTORS POWERS AND AUTHORITY (Sections 361.912, 361.915, 361.918 and 361.921)

This bill tasks the Director of the Division of Finance within the Missouri Department of Commerce and Insurance with overseeing the claimed exemptions, entering into agreements with government officials; adopting analytical software systems, accepting from other federal and state government agencies licensing, examination or investigative reports and audit reports. The Director also has broad administrative authority as detailed in the bill. Further, the bill protects the confidentiality of the information and explains the requirements on what information is regarded as protected and confidential. The Director is authorized to administer and enforce the provisions of the MTMA. The Director is also authorized to participate in multistate supervisory processes between the states and coordinated through the Conference of State Bank Supervisors and Money Transmitter Regulators Association.

CONFLICT OF LAWS (Sections 361.927 and 361.1035)

Inconsistencies between the provisions of MTMA and federal law governing money transmission shall be governed by federal law. A person licensed in Missouri to engage in the business of money transmission is not subject to the requirements of MTMA to the extent that they conflict with current law or establish new requirements not imposed under current law, until such time as the licensee renews the licensee's current license.

LICENSING (Sections 361.930 to 361.954, 361.978 and 361.1011)

As specified in the bill, a person shall not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed. A license is not transferable or assignable. The bill enables multistate licensing, and the Director is encouraged to establish relationships and contracts with the Nationwide Multistate Licensing System and Registry (NMLS) for all aspects of licensing, and utilize their forms, processes, and functionalities

accordingly. The Director is required to develop the form and provide a medium for the applicants to apply for a license. The contents of the application form are detailed in the bill. A nonrefundable application fee and license fee should accompany the license application. The Director is authorized to waive the licensing requirements or allow an applicant to submit other information in lieu of the required information. The bill details the items that any individual in control of a licensee, any individual that seeks to acquire control of a licensee, and each key individual is required to supply to the Director through NMLS.

This bill contains time periods for when the Director shall approve or deny a license which is 120 days after the application is determined to be complete. This bill also provides for the term and expiration time period of the license. A license is renewed annually as specified in the bill. This bill also addresses the suspension or revocation of the license. Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the Commissioner prior to acquiring control as fully detailed and explained in the bill. A licensee that adds or replaces any key individual shall follow the requirements set forth in the bill. A licensee is prohibited from conducting business of money transmission with an unlicensed or nonexempt person. A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering.

REPORTS FILED BY THE LICENSEE (Sections 361.957, 361.960, 361.963, 361.966, 361.969 and 361.972)

A licensee is required to submit a report of condition within 40 days of the end of the calendar quarter or within any extended time prescribed by the Director that includes information set forth in the bill. Further, the licensee is required to submit within 90 days after the end of each fiscal year an audited financial statement prepared by an independent certified public accountant as specified in the bill. The licensee must also submit a report of authorized delegate within 45 days of the end of the calendar quarter. A licensee is also required to file a report with the Director within one business day after the licensee has knowledge of petitions filed for bankruptcy or reorganization; receivership, revocation, or suspension of license. A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. A licensee is

required to maintain records for at least 3 years evidencing compliance with the MTMA.

CONDUCTING BUSINESS THROUGH AN AUTHORIZED DELEGATE (Sections 361.975 and 361.981)

Various provisions that apply to a licensee conducting business through an authorized delegate are contained in Section 361.975, RSMo. Further the bill references civil actions that a licensee can bring against an authorized delegate for failure to remit money. A cause of action that is filed by a licensee in circuit court allows for which the court to grant equitable or legal relief, including prohibiting the authorized delegate to act as an authorized delegate for any licensee in the state and the payment of restitution, damages or other monetary relief if the court finds that the delegate failed to remit money are specified in Section 361.981. The section also includes misdemeanor and felony actions against a delegate who knowingly fails to remit moneys as mentioned in the bill.

MONEY RECEIVED FOR TRANSMISSION (Sections 361.984, 361.987 and 361.990)

Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless certain conditions apply as detailed in the bill. Every licensee shall refund to the sender within 10 days of receipt of the sender's written request for a refund any and all money received for transmission unless certain conditions occur as indicated in the bill. Every licensee or its authorized delegate shall provide the sender a receipt, as defined in the bill, for money received for transmission that contains certain information included in the bill.

LICENSEE PROVIDING PAYROLL PROCESSING SERVICES (Section 361.996)

This bill provides for the issuance of reports to clients detailing client payroll obligations in advance of the funds being deducted and making worker payroll stubs available. The bill specifies when the requirements are inapplicable to a licensee providing payroll processing services. FINANCIAL MATTERS (Sections 361.999, 361.1002, 361.1005 and 361.1008) A licensee is required to maintain tangible net worth of the greater of \$100,000 or 3% of total assets for the first \$100 million; 2% of additional assets for \$100 million to \$1 billion; and .05% of additional assets for over \$1 billion. Further, a licensee is required to provide a surety bond in the form satisfactory to the Director. A licensee is also required to maintain permissible investments that have a market value computed under the generally accepted accounting principles of not less than

the aggregate amount of all of its outstanding money transmission obligations.

This bill includes several detailed provisions relating to permissible investments.

DIRECTORS ORDERS (Sections 361.1014, 361.1017, 361.1020 and 361.1029)

The bill specifies several instances when the Director may issue an order including but not limited to:

(1) The Director's order relating to suspension or revocation of an authorized delegate's designation based upon certain findings (Section 361.1014);

(2) The Director's order for a licensee or authorized delegate to cease and desist based upon violations of the MTMA that cause immediate and irreparable harm (Section 361.1017); and

(3) The Director may resolve matters through a consent order (Section 361.1020); and (4) The Director may issue an order to show cause (Section 361.1029).

FINES AND PENALTIES (Sections 361.1023 and 361.1026)

The bill outlines the penalties associated with intentional making of a false statement, misrepresentation, or false certification of a record or false entry in the record. The Director may assess a civil penalty for violations under MTMA in an amount not to exceed \$1,000 per day for each day the violation is outstanding, plus costs, expenses and attorney's fees.

UNIFORM COMMERCIAL CODE DEFINITIONS (Sections 400.1 to 100.201)

This bill modifies definitions, including, "conspicuous", "delivery", "holder", "money", "person", "send", and "sign" are revised. New definitions are created and creates new definitions for the terms "central bank digital currency" and "electronic". Additionally, all references to "writing" or "writings" in the UCC are changed to "record" or "records".

SALES AND LEASES (Sections 400.2-102 to 400.2A-208)

This bill makes hybrid transactions subject to the UCC under certain circumstances as specified in the bill. Specifically, if the aspects relating to the sale of goods predominate in the sale, the UCC applies to the transaction, provided that it does not preclude the application of other law as applicable, in the case of

aspects of the transaction that do not relate to the sale of goods. If the aspects of the transaction that relate to the sale of goods do not predominate, the UCC only applies to those aspects of the transaction that relate to the sale of goods.

A "hybrid transaction" is defined as a single transaction involving a sale of goods and (1) the provision of services; (2) a lease of other goods; or (3) a sale, lease, or license of property other than goods.

LETTERS OF CREDIT (Sections 400.5 to 400.116)

Currently for the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, the branches of a bank are considered separate juridical entities and a bank is located at the place where its relevant branch is located. The bill provides that a branch of a bank is considered to be the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

CONTROL OF DOCUMENTS OF TITLE (Sections 400.7-102 to 400.7-106)

Currently, a person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to whom the electronic document was issued or transferred.

A system satisfies this current provision, and a person has control of the electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

- (1) Enables the person readily to:
 - (a) Identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
 - (b) Identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and
- (2) Gives the person exclusive power, as described in the bill, to:
 - (a) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and
 - (b) Transfer control of each authoritative electronic copy.

Provisions are also created establishing when a person has control of an electronic document of title on behalf of another person.

INVESTMENT SECURITIES (Sections 400.8-102 to 400.8-803)

For purposes of security entitlements, a purchaser has control of a security entitlement if another person other than a transferor to the purchaser has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

SECURED TRANSACTIONS (Sections 400.9-102 to 400.9-628, RSMo)

The term "authenticate" is replaced with the term "sign" throughout the article. Additionally, new definitions are created for "assignee", "assignor", "chattel paper", "controllable account", "controllable payment intangible", "electronic money", and "money".

The bill includes provisions relating to security interests in controllable electronic records and in the rights to payment that are embedded in the controllable electronic records, controllable accounts, and controllable payment intangibles. Perfection, meaning the enforceability against third parties of security interests in an asset, may be achieved by a secured party obtaining control of the asset or filing a financing statement in the appropriate jurisdiction's filing office. A security interest perfected by control has priority over a security interest perfected by filing.

"Chattel paper" is redefined as the right to payment of a monetary obligation secured by a security interest in specific goods or owed under a lease of specific goods, if the right to payment and interest in the goods are evidenced by a record. The bill addresses matters relating to hybrid transactions and revises the definition of "control" of an authoritative electronic copy of a record evidencing chattel paper. A security interest in chattel paper may be perfected by taking possession of the authoritative tangible copies and obtaining control of the electronic authoritative copies, if any.

Perfection of a security interest in electronic money, a subset of money, as original collateral must be by control, not filing. The bill revises the definition of "money" by excluding deposit accounts and money in an electronic form that cannot be subjected to control. The "take-free" rules for transferees of both electronic money and tangible money and transferees of funds from deposit accounts are revised, as are control of deposit accounts,

control of an authoritative electronic copy of record evidencing chattel paper, and control of electronic money.

This bill modifies the form and instructions for providing notification of disposition of collateral for a consumer-goods transaction and for a non-consumer-goods transaction.

CONTROLLABLE ELECTRONIC RECORDS (Sections 400.12-101 to 400.12-107)

A "controllable electronic record" is defined as a record stored in an electronic medium that can be subjected to control.

If sections governing the controllable electronic records and the sections governing secured transactions conflict, the latter controls. The article applies to controllable accounts and controllable payment intangibles in the same manner that it applies to controllable electronic records.

Except as otherwise provided by law, the resolution of questions concerning the transfer of rights in a controllable electronic record, such as the acts that must be taken to effectuate a transfer of rights and the scope of the rights that a transferee acquires, is determined by law other than this article.

This bill creates provisions relating to when a person has control of and exclusive power over a controllable electronic record and the manner in which account debtors may discharge its obligations with respect to a controllable account or controllable payment intangible. The local law of a controllable electronic record's jurisdiction governs a matter that is covered by this article. If the choice of law refers to a jurisdiction that has adopted this article, those matters include the interpretation and application of these sections, including definitions.

This bill designates the District of Columbia as the location of a debtor that otherwise would be located in a jurisdiction whose law does not provide for a generally applicable system of public notice, such as filing or registration, for nonpossessory security interests.

TRANSITIONAL PROVISIONS (Sections 400.199-101 to 400.199-306)

This bill takes effect August 28, 2024, but provisions are created allowing for a transition period during which the lender's priority established on the effective date of this bill will be maintained. A uniform adjustment date of July 1, 2025, is included, at which time several material provisions will take effect, particularly new priority rules that would override established priorities prior to the effective date of this bill.

SELF-SERVICE STORAGE INSURANCE PRODUCERS (Section 379.1640)

This bill increases, from \$5,000 to \$15,000, the maximum insurance coverage that may be offered by limited lines self-service storage insurance producers and their associates.

NOTICE OF SALE (Section 415.415)

This bill modifies the requirements of notice for sale by an operator of a self-service storage facility for the sale of personal property of an occupant in default. In addition to advertising in the classified section of a newspaper prior to sale, the operator may also and instead advertise in any other commercially reasonable manner. The advertisement is commercially reasonable if at least three independent bidders attend the sale.

This bill contains HB 1478 and SB 927 (2024) and a provision from HB 1498, perfected version (2024).