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California Enacts Sweeping New Law Targeting Money Transmitters

On September 30, 2010, Governor Arnold Schwarzenegger signed into law California AB 2789, the California Money Transmission Act (the "CA MTA").¹ The CA MTA expands the state's current regulation and licensure requirements for money transmitters by the Commissioner of the Department of Financial Institutions (the "Commissioner") by covering domestic money transmitters, including stored value card issuers and, potentially, credit counseling agencies and others engaged in providing debt management plans.

Background

California's regulation of money transmission had previously been of persons who help consumers transmit money overseas through the Transmission of Money Abroad Law (Cal. Fin. Code §§ 1800 *et seq.*), the issuance of travelers checks through the Travelers Checks Act (Cal. Fin. Code §§ 1851 *et seq.*), and the issuance of payment instruments through the Payment Instruments Law (Cal. Fin. Code §§ 33000 *et seq.*). State regulation of money transmission varies by state, but with a few exceptions, most states regulate domestic money transmission involving their residents. With the enactment of AB 2789, California adds similar requirements to its own law and consolidates the regulatory and licensing requirements found in the existing statutes.

Coverage and Requirements

The CA MTA defines "money transmission" to mean the selling or issuing of payment instruments or stored value instruments and the receiving of money for transmission. The CA MTA prohibits a person from engaging in the business of money transmission in California or advertising, soliciting or holding itself out as providing money transmission unless licensed by the Commissioner or exempt from licensure.

Additional highlights:

- Prohibits a person from engaging in the business of money transmission in California or advertising, soliciting or holding itself out as providing money transmission unless licensed by Commissioner.
- Requires specified information to be included in an application for a license which shall be in the form proscribed by the Commissioner.
- Authorizes the Commissioner to conduct an examination of an applicant, at the applicant's expense, and would require the Commissioner to approve an application for a license if the Commissioner makes specified findings, including that the applicant has adequate net worth and is competent to engage in the business of receiving money for transmission. In order to meet the net worth requirements, a licensee that sells or issues payment instruments or stored value instruments must maintain securities on deposit on a surety bond of no less than \$500,000 or 50% of the average daily balance of outstanding payment instruments and stored value instruments in CA. A licensee engaged in money transmission must maintain securities or a surety bond not less than \$250,000 and no more than \$2 million.
- Requires licensees to file audit reports with the Commissioner within 90 days after the end of each fiscal year.
- Requires licensees to maintain records and provide specified notices and disclosures to customers, including a notice regarding a customer's right to a refund, disclosures relating to rates of exchange, a notice indicating that payment instruments are not insured, and a notice providing information on making complaints to the Commissioner against a licensee.
- Authorizes the Commissioner to suspend or revoke a license if the Commissioner finds that a licensee or agent of a licensee has, among other things, violated the provisions of the CA MTA or engaged in fraud or unsound practices, and would authorize the Commissioner to assess specified civil penalties against a person who violates the CA MTA.
- Makes it a crime for a person to engage in the business of money transmission without a license or for a person to intentionally make a false statement, misrepresentation or false certification in a record filed or required to be maintained under these provisions.
- The CA MTA takes effect on January 1, 2011.

Implications for Debt Management Plan Providers

Article 2 § 1806 of the CA MTA provides the Commissioner with the authority to exempt any person or transaction from its provisions if the Commissioner finds such action to be in the public interest and if the regulation of such persons or transactions is not necessary to fulfill the purposes of the CA MTA. In the event that a debt management plan or other activities of credit counseling agencies and other debt relief service providers trigger the statute, this provision may offer a mechanism by which such entities could be exempted from the scope of the regulations.

Notably, the CA MTA makes no changes to the California Check Sellers, Bill Payers and Proraters Law (the "CSBPPL," Cal. Fin. Code § 12000, *et seq.*). Under the CSBPPL, a person providing debt management services is defined as a "prorater" and is required to be licensed with the California Department of Corporations. An exemption exists for nonprofit organizations that meet specified requirements under Cal. Fin. Code § 12104, which are, in many respects, more onerous than the CA MTA and are tailored to debt management plans.

Jonathan Pompan, an attorney in the Washington, DC office of Venable LLP, represents nonprofit credit counseling agencies and others in regulated industries in a wide variety of areas including advertising and marketing law compliance, as well as in connection with Federal Trade Commission and state investigations and law enforcement actions. For more information, please contact Mr. Pompan at 202.344.4383 or jlpompan@Venable.com.

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[1] The text and legislative history of AB 2789 are available at <http://legalinfo.ca.gov>.

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