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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/09

SPONSOR A. Maestas LAST UPDATED \_\_\_\_\_ HB 869

SHORT TITLE Uniform Money Services Act SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 869 enacts the Uniform Money Services Act. The Act was drafted and, in 2000, recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The American Bar Association has approved the Act. According to the NCCUSL's website, five states - Alaska, Arkansas, Iowa, Vermont and Washington - and the U.S. Virgin Islands have adopted the Uniform Money Services Act.

According to the AGO, the Act is a comprehensive law regulating the activities of money transmission (e.g., wire transfers, issuance of stored value cards), check cashing and currency exchange and requiring a license to engage in those activities. The Financial Institutions Division (“FID”) of the Regulation and Licensing Department is charged with administering and enforcing the Act. The Act imposes on licensees disclosure and reporting, security (e.g., surety bonds) and minimum net worth requirements. Licensees are subject to examination by FID at least annually. Licensees must maintain sufficient specified investments with a market value at least equal to the aggregate amount of all outstanding payment instruments, stored value obligations and transmitted money. The money is to be held in trust for the benefit of purchasers and holders of payment instruments. FID is authorized to suspend and revoke licenses, issue cease and desist orders, enter into consent orders and assess civil penalties. The Act includes criminal penalties for fraudulent activities and engaging in money services activities without a license.

Entities excluded from the Act’s coverage include the federal government, states, local governments, banks, post office money transmission services, securities broker-dealers, and boards of trade.

New Mexico currently requires a license to engage in the business of selling negotiated checks and money orders, see NMSA 1978, Section 58-20-1, but does not otherwise license or regulate money transmitting, check cashing or currency exchange activities.

### **FISCAL IMPLICATIONS**

According to the AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The fiscal impact on the judiciary would be proportional to the enforcement of this law, petitions to the district court, and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Financial Institutions Division cannot determine what the fiscal impact will be.

### **SIGNIFICANT ISSUES**

House Bill 869 proposes to regulate an industry that is currently not regulated by the state. The Bill also has a provision whereby if the applicant is already licensed by another state, the Director may approve a person that is licensed in at least one other state to engage in money transmission, check cashing and currency exchange in New Mexico without being licensed pursuant to Section 202 of the Bill. According to the AGO, the effective date of the Act is July 1, 2009, is a short time frame considering the state has not regulated the activities the Act covers up to now.

On page 2 lines 2-12 is the definition of “bank”. According to RLD this definition is not inclusive of all financial institutions as not all financial institutions make commercial loans. There are many small credit unions that do not offer commercial loans.

Page 13 lines 18-21 requires the Director to have a rule in place in order to grant approval for a person to engage in money transmission in New Mexico when licensed in another state without being licensed pursuant to Section 202 of the Bill. According to RLD, it would not be possible to complete the necessary rulemaking by the effective date of the Act.

Page 38 lines 12-19 states: "B. The director, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The director by rule may prescribe or by order allow other types of investments that the director determines to have a safety substantially equivalent to other permissible investments." According to RLD, certificates of deposits at Credit Unions and Savings and Loan Associations are not considered a permissible investment.

### **PERFORMANCE IMPLICATIONS**

This is an industry that the Financial Institutions Division does not currently regulate therefore, there are no performance measures at this time.

### **ADMINISTRATIVE IMPLICATIONS**

The Bill will require the Financial Institutions Division to regulate an industry that is currently not regulated. Money transmission, check cashing and currency exchange licensees and their authorized delegates will number in the thousands. Without an appropriation for the Financial Institutions Division to hire examiners, lawyers (counsel for the Director during administrative proceedings), hearing officers, licensing specialists, office space, cars, etc. the Financial Institutions Division may have difficulty meeting the statutory mandate as proposed by this Bill.

According to RLD, the effective date of July 1, 2009 is not achievable due to administrative preparation required, promulgation and implementation of regulations.

### **CONFLICT,**

According to RLD, HB 869 should include a provision to repeal Chapter 58-20-1, NMSA as noted above. Since this bill if enacted would conflict with Chapter 58-20-1, NMSA 1978 Business of Selling Negotiable Checks, Drafts and Money Orders (Act). This statute currently regulates only the selling of paper instruments such as traveler's checks and money orders. The Act does not regulate money transmission, check cashing or currency exchange.

The definition of a payment instrument in the Bill is as follows:

"payment instrument" means 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. "Payment instrument" does not include a credit card voucher, letter of credit or instrument that is redeemable by the issuer in goods or services;"

The bill as written would require dual licensure of a person in the business of selling negotiable checks, drafts, and money orders.

**OTHER SUBSTANTIVE ISSUES**

On page 6 lines 14-21, excluded from the application of the Act is:

“D. a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act or corporation organized pursuant to the federal Edge Act pursuant to the laws of a state or the United States if it does not issue, sell or provide payment instruments or stored value through an authorized delegate that is not such a person;”

Credit Unions and Savings and Loan Associations do not have the same exclusion granted to banks.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. Money transmission (except the sale of checks and money orders), check cashing and currency exchange activities in New Mexico will continue to be unregulated.

CS/mt

