Cooley

June 6, 2022

On May 20, 2022, Arizona Gov. Doug Ducey signed Senate Bill 1580, which effectively replaces Arizona's current money transmission law[1] with the Model Money Transmission Modernization Act (the Model Act) announced by the Conference of State Bank Supervisors (CSBS) last fall. Arizona's law will become effective on August 28.[2] In addition to incorporating almost all of the Model Act, SB 1580 eliminates Arizona's unique identification requirements for transactions of $1,000 or more. While Arizona establishes a precedent for wholesale adoption of the Model Act, the first state to incorporate significant substantive elements of the Model Act was West Virginia, through Senate Bill 505, earlier this year.

Arizona and West Virginia money transmission laws

As a result of these new laws, money transmitters and other payments services providers should be aware of several significant developments that will have a direct impact on persons operating in these states, but also could become trends if more states embrace the Model Act.

Exemptions

Arizona statutes and regulations did not explicitly recognize an agent-of-the-payee exemption or a bank agent/service provider exemption. SB 1580, however, includes an express exemption for an agent of the payee and a bank service provider, provided that certain criteria are met. (West Virginia's money transmission law already has a functionally similar exemption in place for an agent of a payee.)

Expanded definitions

While Arizona's existing money transmission law generally covers standard activities such as transmitting money and selling/issuing stored value, the Model Act definitions now incorporated into Arizona law are more detailed and specific. For example, "stored value" is defined under the new law (and under the West Virginia law, as amended) as monetary value representing a claim against the issuer 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. The term also includes prepaid access as defined under the federal Bank Secrecy Act. Relatedly, both laws exclude from regulation "closed loop" stored value that meets certain criteria. Additionally, Arizona SB 1580, using the Model Act language, clarifies that covered money transmission involves a transaction with a person in the state – e.g., selling stored value to, or receiving money from, a person in the state – regardless of the location of the licensee.

What is 'money'? (And is virtual currency money?)

Arizona currently defines "money" as a medium of exchange that is authorized or adopted by a domestic or foreign government as a part of its currency.[3] However, Arizona has also embraced the Model Act definition of money transmission to include the transmission of "monetary value." This term, which is broader than "money," means a medium of exchange, whether or not redeemable in money. West Virginia's law similarly defines regulated money transmission to include transmitting money "or other value that substitutes for money." Other regulators have interpreted similar language to encompass activities such as receiving, custodying, transmitting or exchanging virtual currencies, therefore requiring a money transmission license to engage in such activities, and it is possible that West Virginia or Arizona could take a similar approach.

Payroll processing

West Virginia SB 505 expressly states that money transmission "includes payroll processing services." This provision is in the Model Act, but Arizona has not included it in its definition of regulated money transmission.

Receipt requirements and customer service phone number

Arizona's current money transmission law does not impose express receipt requirements, and West Virginia's

SB 505 does not include the receipt requirements from the Model Act, but the new Arizona law incorporates these provisions. As a result, for certain transactions involving money received for transmission from consumers for personal, family or household purposes, Arizona licensees will be required to provide a receipt that includes transaction-related disclosures similar to current receipt requirements in other jurisdictions, such as California. However, in line with the expanded Model Act requirements, Arizona licensees will be required to include on such receipts the name of the licensee, the Nationwide Multistate Licensing System (NMLS) unique identifier, the licensee's business address and a customer service telephone number.

Right to refund

The Model Act includes "right to refund" provisions based on existing state precedents such as California and Washington's money transmission laws. West Virginia did not include such a provision in SB 505, but Arizona's SB 1580 did.[4] As a result, licensees in Arizona will be required to provide a refund if requested by a consumer, unless certain conditions are met. There are also carve outs to this requirement that may apply in the context of money transmission services provided to commercial customers.

Permissible investments

Arizona and West Virginia both amended the definition of "permissible investments," which now include, among other things, the full drawable amount of an irrevocable standby letter of credit, provided certain criteria are met. Additionally, Arizona's SB 1580 includes automated clearing house (ACH) payments "in transit to the licensee" and ACH and wire payments "in transit to a payee" as a permissible investment. (The West Virginia legislation expressly authorizes the West Virginia Division of Financial Institutions to identify additional permissible investments.) The widespread adoption of these new types of permissible investments has the potential to significantly ease the permissible investments burden of licensees.

Net worth requirements

As part of a package with the changes to permissible investments, the prudential standards provisions of the Model Act also establish a new sliding scale minimum tangible net worth requirement as a percentage of the licensee's total assets. Arizona and West Virginia have adopted this new standard (as has South Dakota), which effectively creates a new national standard for minimum net worth for any licensee in one or all of these three states.

What does this mean for payments companies?

A number of provisions in the Model Act, as adopted by West Virginia and in particular by Arizona, can be the start of a regulatory regime that is less burdensome and clearer for licensed money transmitters and other payments companies. Additionally, the elimination in Arizona of unique requirements to collect information such as occupation, signature and taxpayer identification for transactions of $1,000 is likely to be welcome news for industry participants.

Nevertheless, until the Model Act is more broadly adopted by other states, these initial adoption efforts likely will not have a significant impact on payments companies operating on a national basis in terms of easing the burden of managing compliance with disparate laws and regulations. In the interim, industry participants should closely review the changes to the laws in these states, and track developments nationally with respect to implementation of the Model Act. Unless a critical mass of states embraces the Model Act, it risks creating a new and different legal regime that money transmitters will need to manage on top of existing state-by-state variations.

Notes

1. Ariz. Stat. Ann. § 6-1201 *et seq*.
2. For existing licensed money transmitters in Arizona, the effective date of certain provisions is extended for either six months or until the next renewal date of the license, whichever is later.
3. Ariz. Rev. Stat. Ann. § 6-1201(9).
4. Unlike California law, SB 1580 does not provide model language to assist licensees in its implementation. SeeCal. Fin. Code § 2103.

This content is provided for general informational purposes only, and your access or use of the content does not

create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Adam Fleisher Washington, DC	afleisher@cooley.com +1 202 776 2027

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.