

110TH CONGRESS
2D SESSION

H. R. 4049

IN THE SENATE OF THE UNITED STATES

JULY 23, 2008

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend section 5318 of title 31, United States Code, to eliminate regulatory burdens imposed on insured depository institutions and money services businesses and enhance the availability of transaction accounts at depository institutions for such business, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Money Service Busi-
5 ness Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) Check cashers, money transmitters, and
9 other legally authorized and regulated money trans-
10 mitting businesses (also designated as money serv-
11 ices businesses) provide a wide range of necessary fi-
12 nancial services and products to customers from all
13 walks of life, including the under-banked and urban
14 communities.

15 (2) Those services include domestic and inter-
16 national funds transfers, check cashing, money order
17 and traveler’s check sales, and electronic bill pay-
18 ments.

19 (3) Regulatory guidance issued by, and expecta-
20 tions of, the Federal banking agencies and the Sec-
21 retary of the Treasury urge insured depository insti-
22 tutions to conduct reviews of money services busi-
23 nesses’ anti-money laundering compliance programs,
24 placing such depository institutions in the position of
25 quasi-regulators.

1 (4) Consequently, many insured depository in-
2 stitutions have refused or closed money services
3 businesses' accounts in order either not to incur the
4 burden, risk or potential liability for undertaking a
5 de facto regulatory function, or else to avoid super-
6 visory sanctions for not exercising such oversight.

7 (5) This trend endangers the existence of legiti-
8 mate, regulated money services businesses industry
9 and the ability of such businesses to deliver financial
10 services and products.

11 (6) Loss of depository institution accounts by
12 money services businesses threatens to drive the cus-
13 tomer transactions of such businesses underground
14 through unregulated channels, including bulk cash
15 smuggling or other means.

16 (7) It is critical to the interests of national se-
17 curity that transparency of money services business
18 transactions be maintained by ensuring such busi-
19 nesses have a reasonable process to demonstrate to
20 insured depository institutions the compliance by
21 such businesses with anti-money laundering and
22 counter-terrorism financing obligations.

23 (8) Money services businesses are subject to
24 Federal money laundering and terrorist financing
25 control programs and reporting requirements as en-

1 forced by State and Federal regulators, including
2 the Secretary of the Treasury, which are authorized
3 to conduct compliance oversight and to impose sanc-
4 tions through licensing, registration or other powers.

5 (9) These State and Federal regulators have
6 committed to coordinate their supervision and en-
7 forcement of such money services businesses obliga-
8 tions.

9 (10) Insured depository institutions and Fed-
10 eral banking regulators should be able to rely on a
11 regulatory process for conducting oversight of money
12 services businesses' compliance with subchapter II of
13 chapter 53 of title 31, United States Code, as well
14 as on a process of self-certification by legitimate
15 money services businesses that attest to such compli-
16 ance.

17 (11) Accordingly, to eliminate regulatory bur-
18 den imposed on insured depository institutions and
19 promote access by money services businesses to the
20 banking system and to give full recognition to Fed-
21 eral and State agency authority to supervise and en-
22 force money services businesses' compliance with
23 anti-money laundering and counter-terrorism financ-
24 ing obligations and their implementing regulations,
25 it is appropriate and necessary to provide for the

1 self-certification process established pursuant to this
2 Act.

3 **SEC. 3. SELF-CERTIFICATION PROCESS FOR MONEY SERV-**
4 **ICES BUSINESSES ESTABLISHED.**

5 (a) IN GENERAL.—Section 5318(h) of title 31,
6 United States Code, is amended by adding at the end the
7 following new paragraphs:

8 “(4) MONEY TRANSMITTING BUSINESS AC-
9 COUNTS.—

10 “(A) IN GENERAL.—A federally insured
11 depository institution that maintains an account
12 for a money transmitting business (as defined
13 in section 5330(d)(1)) shall have no obligation
14 to review the compliance of that business, or
15 any agent thereof, with that business’s or
16 agent’s obligations under this section, if the in-
17 stitution has on file—

18 “(i) a certification submitted by the
19 money transmitting business that meets
20 the requirements of paragraph (5)(A); or

21 “(ii) in the case of an agent of a
22 money transmitting business—

23 “(I) the certification required
24 under paragraph (5)(B); and

1 “(II) a certification from the
2 business that the named agent is au-
3 thorized to act as the principal’s
4 agent.

5 “(B) PENALTIES.—

6 “(i) CIVIL PENALTIES.—A money
7 transmitting business or an agent of any
8 such business making a material misrepre-
9 sentation in a certification referred to in
10 subparagraph (A) shall be subject to the
11 civil penalties prescribed under section
12 5321 without regard to whether such viola-
13 tion was willful.

14 “(ii) CRIMINAL PENALTIES.—A per-
15 son who knowingly makes a material mis-
16 representation in a certification referred to
17 in subparagraph (A) shall be subject to
18 penalties prescribed under section 5322
19 without regard to whether such violation
20 was willful.

21 “(C) RULE OF CONSTRUCTION.—No provi-
22 sion of this paragraph shall be construed as re-
23 quiring any federally insured depository institu-
24 tion to establish, maintain, administer or man-

1 age an account for a money transmitting busi-
2 ness or an agent of any such business.

3 “(D) RELIANCE FOR INSURED DEPOSI-
4 TORY INSTITUTIONS.—A federally insured de-
5 pository institution shall have no liability under
6 this chapter for the failure of any money trans-
7 mitting business or an agent of any such busi-
8 ness to comply with any provision of this sec-
9 tion and regulations prescribed under any such
10 provision.

11 “(E) FEDERALLY INSURED DEPOSITORY
12 INSTITUTION DEFINED.—The term ‘federally
13 insured depository institution’ means any in-
14 sured depository institution (as defined in sec-
15 tion 3 of the Federal Deposit Insurance Act)
16 and any insured credit union (as defined in sec-
17 tion 101(7) of the Federal Credit Union Act).

18 “(5) PARAGRAPH (4) CERTIFICATION.—

19 “(A) MONEY TRANSMITTING BUSINESS.—
20 A certification by a money transmitting busi-
21 ness meets the requirement of paragraph (4) if
22 the money transmitting business certifies as fol-
23 lows, to the satisfaction of the Secretary:

24 “(i) The business is in compliance
25 with paragraph (1) and regulations pre-

scribed by the Secretary under such paragraph.

“(ii) The business maintains an anti-money laundering program covering all of the identified capacities through which the business acts as a money transmitting business that includes the components of the program specified in subparagraphs (A) through (D) of paragraph (1).

“(iii) The business is licensed or registered as a money transmitting business by each State—

“(I) within which the business operates as a money transmitting business; and

“(II) which requires such licensing or registration.

“(iv) The business is registered with the Secretary in accordance with section 5330, and regulations prescribed under such section, and remains in full compliance with such section and regulations.

“(B) AGENTS OF A MONEY TRANSMITTING BUSINESS.—A certification by an agent of a money transmitting business meets the require-

1 ment of paragraph (4) if the agent certifies as
2 follows, to the satisfaction of the Secretary:

3 “(i) The agent is an agent of a money
4 transmitting business that meets the re-
5 quirements of clauses (i) through (iv) of
6 subparagraph (A).

7 “(ii) If applicable, the agent appears
8 on the list of agents of the money trans-
9 mitting business maintained by the busi-
10 ness pursuant to section 5330(c)(1).

11 “(iii) The agent—

12 “(I) operates as an agent for a
13 money transmitting business pursuant
14 to a written contract;

15 “(II) will act honestly and in
16 compliance with all applicable laws
17 when conducting any business as an
18 agent for a money transmitting busi-
19 ness; and

20 “(III) will immediately notify any
21 federally insured depository institution
22 to which the certification is submitted
23 of the occurrence of any material
24 change in the relationship of the
25 agent with the money transmitting

1 business, including termination or
2 suspension, or the institution of any
3 criminal or administrative proceeding
4 commenced against the agent.

5 “(iv) The agent is licensed or reg-
6 istered as a money transmitting business,
7 or as an agent of such business, by any
8 State—

9 “(I) within which the agent oper-
10 ates as an agent of a money transmit-
11 ting business; and

12 “(II) which requires any such li-
13 censing or registration.

14 “(v) The agent is not required to be
15 registered with the Secretary as a money
16 transmitting business pursuant to regula-
17 tions prescribed by the Secretary under
18 section 5330(c)(2).”.

19 (b) REGULATIONS.—The Secretary of the Treasury
20 shall prescribe such regulations as the Secretary deter-
21 mines to be appropriate to implement the amendments
22 made by subsection (a), in final form, before the end of

- 1 the 120-day period beginning on the date of the enactment
- 2 of this Act.

Passed the House of Representatives July 22, 2008.

Attest: LORRAINE C. MILLER,
Clerk.