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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Wiggam and King

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SUMMARY

- Authorizes the Superintendent of Financial Institutions and the Director of Public Safety to award grants to law enforcement agencies to defray costs related to undocumented immigration, human trafficking, and drug trafficking.
- Funds the grants through a 7% remittance transfer fee imposed on licensed money transmitters on international money transfers from a customer in Ohio to a person outside of the United States.
- Requires the remittance transfer fee to be paid by the money transmitter to the Division of Financial Institutions in the Department of Commerce on a quarterly basis.
- Authorizes the money transmitter to pass along the fee to its customers.
- Authorizes a refundable income tax credit for money transmitter customers who pay the remittance transfer fee, up to $2,000 per year.
- Requires money transmitters to post a notice informing customers of their potential eligibility for the tax credit.

DETAILED ANALYSIS

Overview

The bill imposes a fee on international transactions by money transmitters operating in Ohio for the purpose of providing revenue in the form of grants to local law enforcement. Such grants must be used to defray costs related to undocumented immigration, human trafficking, and drug trafficking. The fee is imposed on money transmissions from a customer in Ohio to a person outside of the U.S. Under the bill, this is called a "remittance transfer fee." The money transmitter is responsible for paying the remittance transfer fee but may pass it through to the customer. If the money transmitter passes through the remittance transfer fee to the customer, the customer is eligible under the bill to claim a refundable income tax credit with respect to the fee. The bill is named Ohio's Withholding Illegal Revenue Entering Drug Markets (WIRED) Act.[1]

Under continuing law, unchanged by the bill, money transmitters are overseen by the Superintendent of Financial Institutions within the Department of Commerce (COM). Money transmitters are any entity or person that is contracted "to receive, directly or indirectly and by any means, money or its equivalent from a person and to deliver, pay, or make accessible, by any means, method, manner or device, whether or not a payment instrument is used, the money received or its equivalent to the same or another person, at the same or another time, and at the same or another place." Transactions in which the recipient of the money is the principal or authorized representative of the principal in a transaction for which the money is received are not considered a money transmission. All money transmitters are required to be licensed by COM. Banks, credit unions, savings and loan institutions, and savings banks are exempt from the license requirement and, therefore, would not be subject to the remittance transfer fee.[2]

WIRED Fund

The bill creates the Withholding Illegal Revenue Entering Drug Markets (WIRED) Fund to be administered by the Superintendent of Financial Institutions and the Director of Public Safety. The Department of Public Safety must use the money in the WIRED Fund to award grants to "law enforcement agencies" to defray costs incurred by those agencies related to undocumented immigration, human trafficking, and drug trafficking. "Law enforcement agency" is defined in the bill as an organized police department, sheriff's office, or marshal's office of any county, municipal corporation, or township. The Director of Public Safety, in consultation with the Superintendent of Financial Institutions, is authorized under the bill to adopt rules to establish the guidelines for the grant program and for administering the fund.[3]

Remittance transfer fee

To provide revenue for the WIRED Fund, the bill imposes a 7% fee on money transmissions from a customer in Ohio to a person outside of the U.S. For example, if the customer sends $200 to a person in Mexico, there would be a $14 fee associated with the transaction. The fee applies beginning on the first day of the first month that begins after the bill's 90-day effective date.

The bill allows a money transmitter to pass along the fee to its customers. However, any money transmitter that does so must provide to the customer a receipt indicating the amount

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[1] Section 5.

[2] R.C. 1315.01(G) and 1315.02(A), not in the bill.

[3] R.C. 1315.131(D) and 5502.80.

of the fee as a separate line item from any other amounts charged by the money transmitter in connection with the transaction.[4]

Quarterly report and payment

The bill requires money transmitters, on a quarterly basis, to file a report of the money transmitter's transactions subject to the remittance transfer fee and pay the aggregate amount due on all such transactions during the previous quarter to the Superintendent of Financial Institutions. The report and fee must be submitted in a form and manner prescribed by the Superintendent.[5]

Tax credit for money transmitter customers

A customer to which the fee was passed along may claim a refundable income tax credit equal to the amount of such fees the customer paid during the year. Taking the example above, if a customer transfers $200 internationally and, as part of the transaction, the money transmitter requires the customer to pay the $14 fee, the customer can later claim a $14 tax credit against their income tax liability, up to a maximum credit amount of $2,000 per year. If a pass-through entity has paid the fees, the credit may be apportioned and claimed by the entity's investors, but the credit claimed by any particular investor may not exceed the $2,000 annual cap.

The credit is refundable, which means that any excess amount of credit may be refunded to the customer if it reduces the customer's tax liability below zero. The credit is not available to money transmitters who pay the fee rather than pass it on to a customer. The Tax Commissioner may require taxpayers to provide proof of eligibility for the credit, e.g., receipts itemizing and verifying the amount of the fees paid.[6]

Annual report

The bill requires the Tax Commissioner, on or before July 30 of each year, to certify to the Superintendent of Financial Institutions and the Director of Budget and Management the amount of tax credits claimed in the preceding fiscal year. Within 15 days of that certification, the Director is required to transfer that amount from the WIRED Fund to the GRF. This mechanism essentially uses foreign remittance fee revenue to reimburse the GRF for amounts forgone due to the refundable tax credit.[7]

Notice requirement

The bill requires money transmitters to post a notice informing customers of the tax credit for any remittance transfer fee the customer pays. The Superintendent of Financial

[4] R.C. 1315.131(A) and (B); Section 4.

[5] R.C. 1315.131(C).

[6] R.C. 5747.87(A) to (C) and 5747.98.

[7] R.C. 5747.87(D).

Institutions will prescribe the form of the notice, and each money transmitter must conspicuously post the notice in the transmitter's place of business.[8]

State authority with respect to foreign commerce

Imposing a remittance transfer fee on international transactions may raise questions under the Foreign Commerce Clause of the U.S. Constitution, which states, "The Congress shall have Power . . . . To regulate Commerce with foreign Nations . . . ." The Foreign Commerce Clause not only grants Congress authority over foreign commerce, it also directly limits the power of the states to discriminate against foreign commerce.[9] The U.S. Supreme Court has held that for a state law that discriminates against foreign commerce to be upheld, the state must show that "the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism."[10]

HISTORY

Action	Date
Introduced	03-20-24

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[8] R.C. 1315.131(E).

[9] U.S. Constitution, Article I, Section 8, Clause 3; *Emerson Elec. Co. v. Tracy,* 90 Ohio St.3d 157 at 159-160 (2000).

[10] *Kraft Gen. Foods v. Iowa Dep't of Revenue & Fin.,* 505 U.S. 71 at 79 (1992) and *Japan Line, Ltd. v. County of Los Angeles,* 441 U.S. 434 at 445-446 and 448-451 (1979).