

111TH CONGRESS  
1ST SESSION

# H. R. 2893

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2009

Mrs. MALONEY (for herself, Mr. BACHUS, Mr. GUTIERREZ, Mr. HENSARLING, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

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 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

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

10 (2) Those services include domestic and inter-  
11 national funds transfers, check cashing, money order  
12 and traveler's check sales, and electronic bill pay-  
13 ments.

14 (3) Regulatory guidance issued by, and expecta-  
15 tions of, the Federal banking agencies and the Sec-  
16 retary of the Treasury urge insured depository insti-  
17 tutions to conduct reviews of money services busi-  
18 nesses' anti-money laundering compliance programs,  
19 placing such depository institutions in the position of  
20 quasi-regulators.

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

1           (5) This trend endangers the existence of legiti-  
2           mate, regulated money services businesses' industry  
3           and the ability of such businesses to deliver financial  
4           services and products.

5           (6) Loss of depository institution accounts by  
6           money services businesses threatens to drive the cus-  
7           tomer transactions of such businesses underground  
8           through unregulated channels, including bulk cash  
9           smuggling or other means.

10          (7) It is critical to the interests of national se-  
11          curity that transparency of money services busi-  
12          nesses' transactions be maintained by ensuring such  
13          businesses have a reasonable process to demonstrate  
14          to insured depository institutions the compliance by  
15          such businesses with anti-money laundering and  
16          counter-terrorism financing obligations.

17          (8) Money services businesses are subject to  
18          Federal money laundering and terrorist financing  
19          control programs and reporting requirements as en-  
20          forced by State and Federal regulators, including  
21          the Secretary of the Treasury, which are authorized  
22          to conduct compliance oversight and to impose sanc-  
23          tions through licensing, registration or other powers.

24          (9) These State and Federal regulators have  
25          committed to coordinate their supervision and en-

1 enforcement of such money services businesses' obliga-  
2 tions.

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

11 (11) Accordingly, to eliminate regulatory bur-  
12 den imposed on insured depository institutions and  
13 promote access by money services businesses to the  
14 banking system and to give full recognition to Fed-  
15 eral and State agency authority to supervise and en-  
16 force money services businesses' compliance with  
17 anti-money laundering and counter-terrorism financ-  
18 ing obligations and their implementing regulations,  
19 it is appropriate and necessary to provide for the  
20 self-certification process established pursuant to this  
21 Act.

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

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

6 “(4) MONEY TRANSMITTING BUSINESS AC-  
7 COUNTS.—

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

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

19 “(ii) in the case of an agent of a  
20 money transmitting business—

21 “(I) the certification required  
22 under paragraph (5)(B); and

23 “(II) a certification from the  
24 business that the named agent is au-  
25 thorized to act as the principal’s  
26 agent.

1 “(B) PENALTIES.—

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

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

17 “(C) RULE OF CONSTRUCTION.—No provi-  
18 sion of this paragraph shall be construed as re-  
19 quiring any federally insured depository institu-  
20 tion to establish, maintain, administer or man-  
21 age an account for a money transmitting busi-  
22 ness or an agent of any such business.

23 “(D) RELIANCE FOR INSURED DEPOSI-  
24 TORY INSTITUTIONS.—A federally insured de-  
25 pository institution shall have no liability under

1 this chapter for the failure of any money trans-  
2 mitting business or an agent of any such busi-  
3 ness to comply with any provision of this sec-  
4 tion and regulations prescribed under any such  
5 provision.

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

13 “(5) PARAGRAPH (4) CERTIFICATION.—

14 “(A) MONEY TRANSMITTING BUSINESS.—  
15 A certification by a money transmitting busi-  
16 ness meets the requirement of paragraph (4) if  
17 the money transmitting business certifies as fol-  
18 lows, to the satisfaction of the Secretary:

19 “(i) The business is in compliance  
20 with paragraph (1) and regulations pre-  
21 scribed by the Secretary under such para-  
22 graph.

23 “(ii) The business maintains an anti-  
24 money laundering program covering all of  
25 the identified capacities through which the

1 business acts as a money transmitting  
2 business that includes the components of  
3 the program specified in subparagraphs  
4 (A) through (D) of paragraph (1).

5 “(iii) The business is licensed or reg-  
6 istered as a money transmitting business  
7 by each State—

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

11 “(II) which requires such licens-  
12 ing or registration.

13 “(iv) The business is registered with  
14 the Secretary in accordance with section  
15 5330, and regulations prescribed under  
16 such section, and remains in full compli-  
17 ance with such section and regulations.

18 “(B) AGENTS OF A MONEY TRANSMITTING  
19 BUSINESS.—A certification by an agent of a  
20 money transmitting business meets the require-  
21 ment of paragraph (4) if the agent certifies as  
22 follows, to the satisfaction of the Secretary:

23 “(i) The agent is an agent of a money  
24 transmitting business that meets the re-



1            requirements of clauses (i) through (iv) of  
2            subparagraph (A).

3            “(ii) If applicable, the agent appears  
4            on the list of agents of the money trans-  
5            mitting business maintained by the busi-  
6            ness pursuant to section 5330(c)(1).

7            “(iii) The agent—

8                  “(I) operates as an agent for a  
9                  money transmitting business pursuant  
10                  to a written contract;

11                  “(II) will act honestly and in  
12                  compliance with all applicable laws  
13                  when conducting any business as an  
14                  agent for a money transmitting busi-  
15                  ness; and

16                  “(III) will immediately notify any  
17                  federally insured depository institution  
18                  to which the certification is submitted  
19                  of the occurrence of any material  
20                  change in the relationship of the  
21                  agent with the money transmitting  
22                  business, including termination or  
23                  suspension, or the institution of any  
24                  criminal or administrative proceeding  
25                  commenced against the agent.

1           “(iv) The agent is licensed or reg-  
2           istered as a money transmitting business,  
3           or as an agent of such business, by any  
4           State—

5                       “(I) within which the agent oper-  
6                       ates as an agent of a money transmit-  
7                       ting business; and

8                       “(II) which requires any such li-  
9                       censing or registration.

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

15           (b) REGULATIONS.—The Secretary of the Treasury  
16           shall prescribe such regulations as the Secretary deter-  
17           mines to be appropriate to implement the amendments  
18           made by subsection (a), in final form, before the end of  
19           the 120-day period beginning on the date of the enactment  
20           of this Act.

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