



**STATE OF MINNESOTA**  
DEPARTMENT OF COMMERCE  
ST. PAUL 55101

OFFICE OF THE COMMISSIONER

500 METRO SQUARE BUILDING  
ST. PAUL, MN 55101

February 20, 1990

The Legislative Commission to Review Administrative Rules  
Maryanne Hruby, director  
55 State Office Building  
St. Paul, Minnesota 55101

Re: Currency Exchange Rates

Dear Ms. Hruby:

Enclosed for your reference is a copy of Statement of Need and Reasonableness relating to Currency Exchange Rates.

Very truly yours,

THOMAS H. BORMAN  
Commissioner of Commerce

By:

A handwritten signature in cursive script that reads "Elissa G Mautner".

Elissa G. Mautner  
Staff Attorney

EGM:jmt

Encl.

STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED  
RULES RELATING TO CURRENCY  
EXCHANGE RATES

STATEMENT OF NEED  
AND REASONABLENESS

STATEMENT OF AUTHORITY

Minn. Stats. Ch. 53A defines and regulates currency exchanges. The statute specifically requires that currency exchanges be licensed and that the fees charged be reasonable. Section 53A.07, subd. 1 provides that the fees charged "must be filed with and approved by the commissioner [of commerce, hereinafter the commissioner]." The commissioner is given the authority to disapprove unreasonable fees. Section 53A.07, subd. 3 sets out six factors to be considered by the commissioner in determining the reasonableness of fees. This section mandates that the commissioner set a separate fee rate for government-issued checks in an amount up to \$500. Section 53A.12 gives the commissioner the authority to adopt such rules as are necessary "to administer and enforce" chapter 53A. Further rulemaking authority is found in Minn. Stats. Section 45.023 which authorizes the commissioner to adopt rules "whenever necessary or proper in discharging the commissioner's official responsibilities."

The commissioner finds the proposed rules to be necessary and appropriate in the public interest and consistent with the purposes fairly intended by the policies and provisions of Minn. Stats. Chapter 53A and section 45.023.

#### HISTORY

Over the past year, the commissioner has met with representatives of currency exchanges in Minnesota, as well as with regulators in other states. A national meeting of regulators of financial institutions was held in Austin, Texas in November, 1989, at which currency exchanges were discussed. Of the states which regulate currency exchanges, some do not set the fees which are charged, but allow the market to control. Others establish the maximum allowed rate. Of the states which presently regulate currency exchange rates, the highest rate allowed for any type of check is 1.2%, plus a service charge of \$.90.

In July, 1989, the commissioner sent a survey to Minnesota's currency exchanges, requesting information as to charges and costs. The responses indicated that there was little uniformity as to fees charged. The rates ranged from a high of 16% for a second-party personal check to a low of 2% as a special discount for senior citizens and students. The rates were not always posted for customer inspection.

FACTS ESTABLISHING NEED AND REASONABLENESS

Rule Part 2872.0100

Currency exchanges are "[t]he poor man's bank." See, Forbes Magazine, October 29, 1979, at 69. The customers are largely unsophisticated individuals who live from paycheck to paycheck or, from government check to government check. They cannot afford to deposit their checks in a bank or maintain an account, and banks generally will not cash a check unless there is money in an account to cover it. Id. at 69-70.

The proposed rules are intended to provide uniformity in the fees charged by currency exchanges in Minnesota. In addition, the purpose of the rule is to allow currency exchanges to charge a fee that results in a reasonable profit, without being excessive. The commissioner obtained fifteen responses to the July 1989 survey of Minnesota currency exchange costs and charges. As indicated above, the results revealed wide variation in fees charged. There now are six other states (Indiana, Wisconsin, Connecticut, New York, Oregon and Illinois) which have currency exchange statutes. Legislators in Ohio have drafted a bill which has not yet passed, and several other states (e.g. Virginia, Texas, Michigan) are considering legislation. Of the six states in addition to Minnesota which have a currency exchange or check cashers statute, only Connecticut, New York and Illinois regulate the fee rate for the service. Of these, Connecticut regulates the fee only with respect to government

checks. Illinois Currency Exchange Rules and Regulations Section 130.30(a) provides that the "maximum rate to be charged by ... currency exchanges for cashing any check shall not exceed an amount equal to 1.2% of the face amount of the check plus a service charge of ninety cents (\$.90)."

Chapter III of the New York Banking Superintendent's Regulations, at Section 400.13, states that the fee for check cashing shall not "exceed (a) nine tenths of one percentum thereof or (b) fifty cents, whichever is greater." This rate represents an increase in the allowable fee in New York; until recently, the maximum rate was 3/4 of one percent of the face amount of the instrument. Neither Illinois nor New York vary the maximum allowable rate on the basis of the type of check involved.

The results of the commissioner's survey revealed that, left unregulated, currency exchanges in Minnesota were charging fees far in excess of the allowable rates in regulated states. In addition, some currency exchanges within Minnesota were charging significantly higher rates than others. It is reasonable to assume that all Minnesota currency exchanges could, if properly and efficiently operated, charge fees approximately the same as those charged in other regulated states, and still obtain a reasonable profit. Accordingly, subpart 1 of the proposed rule establishes a presumption that a reasonable fee for check cashing services is the greater of 1-1/2% of the face amount of the instrument or \$.50, and the greater of 1% of the face amount of a government check in an amount up to \$500.00, or \$.50. Pursuant

to subpart 2, the commissioner may disapprove fees that exceed those presumed to be reasonable. A currency exchange has the right, however, to present evidence with respect to the factors set out in Minn. Stats. section 53A.07, subd. 3 in order to rebut the presumption. The commissioner will then make a determination based upon consideration of the evidence and the standards in the statute. It should be noted that the rule sets a higher maximum fee than the other states which regulate currency exchange fees. A separate rate is established for government issued checks in an amount up to \$500, as required by Minn. Stats. section 53A.07, Subd. 3.

#### Rule Part 2872.0200

The commissioner's survey of Minnesota currency exchanges revealed that fee schedules were not always posted for customers' inspection. The intent of this rule is to carry out the mandate of Minn. Stats. section 53A.13 that fees are to be prominently displayed. The rule designates the manner in which this is to be accomplished by setting out the size of the lettering and the information to be conveyed to customers. The rule requires that fee schedules be posted in two locations in the customers' area.

#### SMALL BUSINESS CONSIDERATIONS

Minn. Stats. section 14.115 provides that the impact on small businesses be considered in the development of proposed rules. Subdivision 2 of that section lists five possible methods for reducing the impact of the rules. The only relevant provision to the rules at issue is subdivision 2(a) which requires the

agency to consider less stringent compliance standards for small businesses. Subdivision 3, however, states that any relaxation of the rules for small businesses shall not be incorporated into the rules if "doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking." The purpose of the currency exchange rules is to unify currency exchange fees and protect the public from rate gouging. A blanket relaxation of the requirements of the rules for small businesses would defeat the purpose of the rules, and is also unnecessary. Since the rules set out a rebuttable presumption, small businesses that wish to charge rates in excess of those established in the rules, may present evidence of their reasonableness to the commissioner. Based upon consideration of the purpose of the rules and the rebuttable presumption incorporated therein, the commissioner concludes that compliance with the proposed rules would not unduly burden small businesses and that the rules are necessary to achieve the legislative purposes.