



# HOUSE BILL 289: North Carolina Money Transmitters Act.

2015-2016 General Assembly

<b>Committee:</b>		<b>Date:</b>	August 9, 2016
<b>Introduced by:</b>		<b>Prepared by:</b>	Trina Griffin Staff Attorney
<b>Analysis of:</b>	S.L. 2016-81		

**OVERVIEW:** *S.L. 2016-81 modernizes and clarifies the Money Transmitters Act (MTA) and replaces the statutes incorporating much of the existing law, as requested by the Office of the North Carolina Commissioner of Banks. The main changes to the MTA are as follows:*

- *It specifically addresses the transmission of virtual currency, such as Bitcoin. These payment systems are currently subject to the act, but industry has requested clarification of the law to take into account the changes that have occurred since the law was written.*
- *It excludes certain business-to-business money transmission activity.*
- *It revises the cost structure by replacing the examination fee and the annual renewal fee with an annual assessment based on North Carolina transmission volume.*
- *It converts the annual license into a perpetual license.*

*When the bill was first introduced during the 2015 Session, the effective date was October 1, 2015. The bill failed to pass during the 2015 Session and was enacted during the 2016 Session. However, the effective date was not changed and, therefore, the act became effective on October 1, 2015. It was not intended for the act to have a retroactive effective date, and the bill sponsor attempted to rectify the date in the Technical Corrections bill (Sec. 49 of S821), but that bill did not pass. The Commissioner of Banks has indicated that, with regard to any fee or assessment changes, it will not retroactively assess the industry and will treat the effective date as if it were October 1, 2016. It is anticipated that the effective will be corrected in a technical bill in the 2017 Session.*

**CURRENT LAW:** The current Money Transmitters Act was enacted in 2001 and regulates non-bank companies that engage in the business of transmitting funds on behalf of others. This activity is regulated by both federal law and the laws in 48 states. Among the reasons for regulating this industry are to prevent money laundering and the financing of terrorism and to protect consumers from the risk that money transfer businesses will fail to deliver the funds as agreed. As of June 2016, there are approximately 109 money transmitter licensees in North Carolina. Examples of traditional money transmitters are Western Union and MoneyGram. Online payment processors, like PayPal and Amazon, are generally considered money transmitters as well.

**BILL ANALYSIS:** S.L. 2016-81 replaces the current statutory article with a new one, incorporating much of the existing law, and modernizes and clarifies various features as requested by the Office of the North Carolina Commissioner of Banks. The main changes are as follows:

- It specifically addresses the transmission of virtual currency, such as Bitcoin. These payment systems are currently subject to the act, but industry has requested clarification of the law to take into account the changes that have occurred since the law was written.

Karen Cochrane-Brown  
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- It excludes certain business-to-business money transmission activity.
- It revises the cost structure by replacing the examination fee and the annual renewal fee with an annual assessment based on North Carolina transmission volume.
- It converts the annual license into a perpetual license.

A more detailed description of the act is as follows:

**Definitions**—Several new terms are added to the list of defined terms including "branch office"; "depository institution"; "NMLS"; and "virtual currency". Several definitions are revised including "payment instrument" and "stored value".

**License Requirement**—Clarifies that licensure is only required for those who profit from the transmission of funds and excludes those that transmit funds without compensation or gain. Also clarifies existing requirement that out of state entities must be licensed if their services are available to North Carolina consumers.

**Exemptions**—Provides that individuals acting as the agent of the recipient of transmitted funds under a written contract are exempt from the MTA. Creates a new exemption from licensure for employers who use money transmission services to pay wages. Provides for a method to seek exemption from the Office of the Commissioner of Banks.

**License Application**—Applications for licenses under the MTA would be through the Nationwide Multistate Licensing System (NMLS), which is used by over 20 other states.

**Minimum Net Worth**—Creates a uniform minimum net worth of \$250,000 for all applicants and allows the Commissioner of Banks (Commissioner) to increase the amount of net worth required of an applicant or licensee if the Commissioner determines that the additional net worth is necessary based on consideration of specific factors.

**Surety Bond**—Restructures the surety bond requirement to provide an initial bond amount of \$150,000 with the bond for subsequent years based on a tiered structure determined by volume of transmissions in the State with a maximum of \$250,000. Current law requires a minimum of \$150,000 with an additional \$5,000 required per location in the State up to a maximum of \$250,000.

**Permissible Investments and Statutory Trusts**—Makes conforming statutory reference changes, but does not make substantive changes to existing law.

**Application Fees and Annual Assessment**—Keeps existing application fee of \$1,500 and replaces the examination fee and annual renewal fee with an annual assessment to be paid by the licensee to cover the cost of the regulation, based on the company's North Carolina transmission volume.

**Issuance of License**—Codifies an existing administrative rule that an application for a license will be considered abandoned if the applicant fails to provide all requested information within 30 days of submission or if the applicant fails to respond to subsequent requests for information necessary to evaluate the application. Annual licenses would become perpetual licenses which eliminates the current requirement that companies must renew their licenses every year and pay annual renewal fee.

**Prohibited Practices**—Creates a clear set of prohibited practices that address risks posed by money transmission such as failure to remit money received for transmission.

**Maintenance of Records**—Sets out the maintenance of records section of the current law and updates the language related to the maintenance of digital records to account for different methods of digitizing documents. Clarifies the duty of the licensee to notify the Commissioner of the change of location of stored records.

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**Reporting**—Consolidates annual and quarterly reports into one statute and provides that the reporting is to be done through the NMLS. The Commissioner could accept other reporting through the NMLS to avoid duplicate reporting requirements where possible.

**Notice of Material Event**—Clarifies existing reporting requirements that are associated with material events which are referred to as "extraordinary reporting requirements" in the current law. One addition would be that within 15 days of a change or acquisition of control of a licensee, the licensee would provide notice of the event to the Commissioner.

**Examination and Investigation Authority**—Consolidates the existing authority of the Commissioner to examine and investigate both licensees and prospective licensees to ensure compliance.

**Licensure Authority**—Sets forth a 2-part test that allows the Commissioner through an order deny, suspend, revoke, or refuse to issue a license under certain listed circumstances and only if the order would be in the public interest.

**Disciplinary Authority**—Provides that all administrative actions and hearings under MTA are subject to the NC Administrative Procedures Act. Allows the Commissioner to issue a summary suspension of a license or cease and desist order if the Commissioner has reason to believe there has been a violation of law that poses an imminent threat to the public. This would be different than current law which only allows the Commissioner to pursue an injunction in Wake County Superior Court. The maximum civil money penalty for each violation would increase to \$5,000 from \$1,000. The Commissioner would also continue to have the authority to negotiate and settle disputed matters short of litigation.

**Criminal Penalties**—Incorporates existing criminal penalties.

**Confidentiality**—Clarifies existing confidentiality requirements to extend to information obtained in the regulation of money transmitters.

**Rules**—Keeps existing authority of the State Banking Commission to adopt rules necessary to implement the MTA as well as the method for aggrieved parties to appeal a rule or order of the Commissioner to the State Banking Commission.

**Service of Process**—Keeps existing language to service of process on licensee and adds the service of process language from other statutes administered by the Commissioner.

**Commissioner's Participation in Nationwide Registry**—Authorizes the migration to the NMLS.

**Severability**—Allows for any invalid or unconstitutional provision to be removed without affecting the MTA as a whole.

**Transition**—Provides that any licensee who holds a license in good standing on or after November 1, 2014 can continue to engage in money transmitting subject to the requirements of the MTA.

**EFFECTIVE DATE:** The act has a retroactive effective date of October 1, 2015. However, that date was inadvertently left in the act from when it was originally introduced in March of 2015 and should have been changed. The Commissioner of Banks did not intend for the act to be retroactive and has indicated that it will not retroactively assess the industry; it will treat the act as if it has an October 1, 2016 effective date.

*Drupati Chauhan, counsel to House Banking, substantially contributed to this summary.*