

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 890
Judiciary II Committee Substitute Adopted 5/16/01

Short Title: Money Transmitters Act.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE NORTH CAROLINA MONEY TRANSMITTERS ACT,
3 ARTICLE 16 OF CHAPTER 53 OF THE GENERAL STATUTES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 16 of Chapter 53 of the General Statutes, G.S. 53-192
6 through G.S. 53-208, is hereby repealed.

7 SECTION 2. Chapter 53 of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 16A.

10 "Money Transmitters Act.

11 "**§ 53-208.1. Citation of Article.**

12 This Article shall be known and cited as the 'Money Transmitters Act'.

13 "**§ 53-208.2. Definitions.**

14 (a) Unless otherwise provided in this Article, or when the context clearly
15 indicates that a different meaning is intended, the following definitions shall apply to
16 this Article:

17 (1) 'Applicant' means a person filing an application for a license under this
18 Article.

19 (2) 'Authorized delegate' means an entity designated by the licensee under
20 the provisions of this Article to sell or issue payment instruments or
21 stored value or engage in the business of transmitting money on behalf
22 of a licensee.

23 (3) 'Commissioner' means the Commissioner of Banks of the State of
24 North Carolina.

25 (4) 'Control' means ownership of, or the power to vote, ten percent (10%)
26 or more of the outstanding voting securities of a licensee or controlling
27 person. For purposes of determining the percentage of a licensee
28 controlled by any person, there shall be aggregated with the person's

- 1 interest the interest of any other person controlled by the person or by
2 any spouse, parent, or child of the person.
- 3 (5) 'Controlling person' means any person in control of a licensee.
- 4 (6) 'Electronic instrument' means a card or other tangible object for the
5 transmission or payment of money or monetary value which contains a
6 microprocessor chip, magnetic strip, or other means for the storage of
7 information, that is prefunded and for which the value is decremented
8 upon each use, but does not include a card or other tangible object that
9 is redeemable by the issuer in the issuer's goods or services.
- 10 (7) 'Executive officer' means the licensee's president, chairman of the
11 executive committee, senior officer responsible for the licensee's
12 business, chief financial officer, and any other person who performs
13 similar functions.
- 14 (8) 'Key shareholder' means any person, or group of persons acting in
15 concert, who is the owner of ten percent (10%) or more of any voting
16 class of an applicant's stock.
- 17 (9) 'Licensee' means a person licensed under this Article.
- 18 (10) 'Material litigation' means any litigation that, according to generally
19 accepted accounting principles, is deemed significant to an applicant's
20 or licensee's financial health and would be required to be referenced in
21 that entity's annual audited financial statements, report to shareholders,
22 or similar documents.
- 23 (11) 'Monetary value' means a medium of exchange, whether or not
24 redeemable in money.
- 25 (12) 'Monetary transmission' means (i) the sale or issuance of payment
26 instruments or stored value, or (ii) the act of engaging in the business
27 of receiving money or monetary value for transmission within the
28 United States or to locations abroad by any and all means, including
29 payment instrument, wire, facsimile, or electronic transfer.
- 30 (13) 'Payment instrument' means any electronic or written check, draft,
31 money order, traveler's check, or other electronic or written instrument
32 or order for the transmission or payment of money or monetary value,
33 whether or not the instrument is negotiable. The term 'payment
34 instrument' does not include any credit card voucher, any letter of
35 credit, or any instrument that is redeemable by the issuer in goods or
36 services.
- 37 (14) 'Outstanding payment instrument' means any payment instrument
38 issued by the licensee which has been sold in the United States directly
39 by the licensee or any payment instrument issued by the licensee
40 which has been sold by an authorized delegate of the licensee in the
41 United States, which has been reported to the licensee as having been
42 sold, and which has not yet been paid by or for the licensee.

- 1 (15) 'Person' means any individual, partnership, association, joint-stock
2 association, trust, or corporation.
- 3 (16) 'Remit' means either to make direct payment of the funds to the
4 licensee or its representatives authorized to receive those funds, or to
5 deposit the funds in a bank, credit union, or savings and loan
6 association or other similar financial institution in an account specified
7 by the licensee.
- 8 (17) 'Permissible investments' means all of the following:
- 9 a. Cash.
- 10 b. Certificates of deposit or other debt obligations of a financial
11 institution, either domestic or foreign.
- 12 c. Bills of exchange or time drafts drawn on and accepted by a
13 commercial bank, otherwise known as bankers' acceptances,
14 which are eligible for purchase by member banks of the Federal
15 Reserve System.
- 16 d. Any investment bearing a rating of one of the three highest
17 grades as defined by a nationally recognized organization that
18 rates securities.
- 19 e. Investment securities that are obligations of the United States,
20 its agencies, or instrumentalities, or obligations that are
21 guaranteed fully as to principal and interest of the United States,
22 or any obligations of any state, municipality, or any political
23 subdivision thereof.
- 24 f. Shares in a money market mutual fund, interest-bearing bills or
25 notes or bonds, debentures, or preferred stock traded on any
26 national securities exchange or on a national over-the-counter
27 market, or mutual funds primarily composed of such securities
28 or a fund composed of one or more permissible investments as
29 set forth herein.
- 30 g. Any demand borrowing agreement or agreements made to a
31 corporation or a subsidiary of a corporation whose capital stock
32 is listed on a national exchange.
- 33 h. Receivables due to a licensee from its authorized delegates
34 pursuant to a contract described in G.S. 53-208.20, which are
35 not past due or doubtful of collection.
- 36 i. Any other investments or security device approved by the
37 Commissioner.
- 38 (18) 'Stored value' means monetary value that is evidenced by an electronic
39 record.

40 **"§ 53-208.3. License required.**

1 (a) On or after October 1, 2001, no person except those exempt pursuant to G.S.
2 53-208.4 shall engage in the business of money transmission in this State without a
3 license as provided in this Article.

4 (b) A licensee may conduct its business in this State at one or more locations,
5 directly or indirectly owned, or through one or more authorized delegates, or both,
6 pursuant to the single license granted to the licensee.

7 (c) For the purposes of this Article, a person is considered to be engaged in the
8 business of money transmission in this State if that person makes available, from a
9 location inside or outside of this State, an internet website North Carolina citizens may
10 access in order to enter into those transactions by electronic means.

11 **"§ 53-208.4. Exemptions.**

12 (a) This Article shall not apply to:

13 (1) The United States or any department, agency, or instrumentality
14 thereof;

15 (2) The United States Post Office;

16 (3) The State or any political subdivisions thereof;

17 (4) Banks, credit unions, savings and loan associations, savings banks or
18 mutual banks organized under the laws of any state or the United
19 States, provided that they do not issue or sell payment instruments
20 through authorized delegates that are not banks, bank holding
21 companies, credit unions, savings and loan associations, savings banks
22 or mutual banks; and

23 (5) The provision of electronic transfer of government benefits for any
24 federal, state, or county governmental agency as defined in Federal
25 Reserve Board Regulation E, by a contractor for and on behalf of the
26 United States or any department, agency, or instrumentality thereof, or
27 any state or any political subdivisions thereof.

28 (b) Authorized delegates of a licensee, acting within the scope of authority
29 conferred by a written contract as described in G.S. 53-208.19 shall not be required to
30 obtain a license pursuant to this Article.

31 **"§ 53-208.5. License qualifications.**

32 (a) Each licensee shall have at all times a net worth of not less than one hundred
33 thousand dollars (\$100,000) calculated in accordance with generally accepted
34 accounting principles. Licensees engaging in money transmission at more than one
35 location or through authorized delegates shall have an additional net worth of ten
36 thousand dollars (\$10,000) per location in this State, as applicable, to a maximum of
37 five hundred thousand dollars (\$500,000). Licensees with neither locations nor
38 authorized delegates in this State shall have an additional net worth as established by the
39 Commissioner in an amount not to exceed a maximum of five hundred thousand dollars
40 (\$500,000).

41 (b) Every corporate applicant, at the time of filing of an application for license
42 under this Article and at all times after a license is issued, shall be in good standing in

1 the state of its incorporation and, if required by the North Carolina Business
2 Corporations Act, Chapter 55 of the General Statutes, shall be registered or qualified to
3 do business in this State. All noncorporate applicants shall, at the time of the filing of an
4 application for a license under this Article and at all times after a license is issued, be
5 registered or qualified to do business in the State as required by law.

6 **"§ 53-208.6. Permissible investments and statutory trust.**

7 (a) Each licensee under this Article shall possess at all times unencumbered
8 permissible investments having an aggregate market value, calculated in accordance
9 with generally accepted accounting principles, of not less than the aggregate face
10 amount of all outstanding payment instruments and stored value obligations issued or
11 sold. This requirement may be waived by the Commissioner if the dollar volume of a
12 licensee's outstanding payment instruments and stored value do not exceed the bond or
13 other security devices posted by the licensee pursuant to G.S. 53-208.8.

14 (b) Permissible investments, even if commingled with other assets of the
15 licensee, shall be deemed by operation of law to be held in trust for the benefit of the
16 purchasers and holders of the licensee's outstanding payment instruments and stored
17 value obligations in the event of the bankruptcy of the licensee.

18 **"§ 53-208.7. License application.**

19 (a) Each application for a license under this Article shall be made in writing,
20 under oath, and in a form prescribed by the Commissioner. For all applicants, each
21 application shall contain:

- 22 (1) The exact name of the applicant, the applicant's principal address, any
23 assumed or trade name used by the applicant in the conduct of its
24 business, and the location of the applicant's business records.
- 25 (2) The history of the applicant's material civil litigation for a 10-year
26 period prior to the date of the application and a record of any criminal
27 convictions.
- 28 (3) A description of the activities conducted by the applicant and a history
29 of operations.
- 30 (4) A description of the business activities in which the applicant seeks to
31 be engaged in the State.
- 32 (5) A list identifying the applicant's proposed authorized delegates in the
33 State, if any, at the time of the filing of the license application.
- 34 (6) A sample authorized delegate contract, if applicable.
- 35 (7) A sample form of payment instrument, if applicable, which bears the
36 name and address or telephone number of the issuer clearly printed on
37 the payment instrument.
- 38 (8) The location or locations at which the applicant and its authorized
39 delegates, if any, propose to conduct the licensed activities in the State.
- 40 (9) The name and address of the clearing bank or banks on which the
41 applicant's payment instruments will be drawn or through which the
42 payment instruments will be payable.

- 1 **(b)** If the applicant is a corporation, the applicant shall also provide:
- 2 **(1)** The date of the applicant's incorporation and state of incorporation.
- 3 **(2)** A certificate of good standing from the state in which the applicant
4 was incorporated.
- 5 **(3)** A certificate of authority from the Secretary of State to conduct
6 business in this State, if required by the North Carolina Business
7 Corporations Act, Chapter 55 of the General Statutes.
- 8 **(4)** A description of the corporate structure of the applicant, including the
9 identity of any parent or subsidiary of the applicant, and the disclosure
10 of whether any parent or subsidiary is publicly traded on any stock
11 exchange.
- 12 **(5)** The name, business and residence address, and employment history for
13 the past five years of the applicant's executive officers and the officers
14 or managers who will be in charge of the applicant's activities to be
15 licensed pursuant to this Article.
- 16 **(6)** The name, business and residence address, and employment history for
17 the period five years prior to the date of the application of any key
18 shareholder of the applicant.
- 19 **(7)** The history of material civil litigation for a 10-year period prior to the
20 day of the application and a record of any criminal conviction for
21 every executive officer or key shareholder.
- 22 **(8)** A copy of the applicant's most recent audited financial statement,
23 including the balance sheet, statement of income or loss, statement of
24 changes in shareholder equity, and statement of changes in financial
25 position, and, if available, the applicant's audited financial statements
26 for the immediately preceding two-year period. However, if the
27 applicant is a wholly owned subsidiary of another corporation, the
28 applicant may submit either the parent corporation's consolidated
29 audited financial statements for the current year and for the
30 immediately preceding two-year period or the parent corporation's
31 Form 10K reports filed with the United States Securities and Exchange
32 Commission for the prior three years in lieu of the applicant's financial
33 statements. If the applicant is a wholly owned subsidiary of a
34 corporation having its principal place of business outside the United
35 States, similar documentation filed with the parent corporation's non-
36 United States regulator may be submitted to satisfy this provision.
- 37 **(9)** Copies of all filings, if any, made by the applicant with the United
38 States Securities and Exchange Commission, or with a similar
39 regulator in a country other than the United States, within the year
40 preceding the date of filing of the application.
- 41 **(c)** If the applicant is not a corporation, the applicant shall also provide:

- 1 (1) The name, business and residence address, personal financial
2 statement and employment history, for the past five years, of each
3 principal of the applicant and the name, business and residence
4 address, and employment history for the past five years of any other
5 person or persons who will be in charge of the applicant's activities to
6 be licensed pursuant to this Article.
- 7 (2) The place and date of the applicant's registration or qualification to do
8 business in this State.
- 9 (3) The history of material civil litigation for a 10-year period prior to the
10 date of the application and a record of any criminal conviction for each
11 individual having an ownership interest in the applicant, and each
12 individual who exercises supervisory responsibility with respect to the
13 applicant's activities.
- 14 (4) Copies of the applicant's audited financial statements, including
15 balance sheet, statement of income or loss, and statement of changes in
16 financial position, for the current year and, if available, for the
17 immediately preceding two-year period.

18 The Commissioner is authorized, for good cause shown, to waive any requirements
19 of this section with respect to any license application or to permit a license applicant to
20 submit substituted information in its license application in lieu of the information
21 required by this section.

22 **"§ 53-208.8. Surety bond.**

23 (a) Each application shall be accompanied by a surety bond acceptable to the
24 Commissioner in the amount of one hundred fifty thousand dollars (\$150,000). If the
25 applicant proposes to engage in business under this Article at more than one location,
26 through authorized delegates or otherwise, then the amount of the security bond will be
27 increased by five thousand dollars (\$5,000) per location, up to a maximum of two
28 hundred fifty thousand dollars (\$250,000). In the case of an applicant which engages in
29 business under this Article, but has no locations or authorized delegates in this State, the
30 amount of the security bond may be increased at the Commissioner's discretion to a
31 maximum of two hundred fifty thousand dollars (\$250,000). The surety bond shall be in
32 a form satisfactory to the Commissioner and shall run to the State for the benefit of any
33 claimants against the licensee to secure the faithful performance of the obligations of
34 the licensee with respect to the receipt, handling, transmission, and payment of money
35 or monetary value in connection with the sale and issuance of payment instruments,
36 stored value, or transmission of money. The aggregate liability of the surety in no event
37 shall exceed the principal sum of the bond. Claimants against the licensee may
38 themselves bring suit directly on the security bond, or the Commissioner may bring suit
39 on behalf of claimants, either in one action or in successive actions.

40 (b) In lieu of a surety bond, the licensee may deposit with the Commissioner, or
41 with any bank in this State designated by the licensee and approved by the
42 Commissioner, to an aggregate amount, based upon principal amount or market value,

1 whichever is lower, of not less than the amount of the surety bond or portion thereof, the
2 following:

- 3 (1) Unencumbered cash.
- 4 (2) Unencumbered interest-bearing bonds.
- 5 (3) Unencumbered notes.
- 6 (4) Unencumbered debentures.
- 7 (5) Unencumbered obligations of the United States or any agency or
8 instrumentality thereof, or guaranteed by the United States.
- 9 (6) Unencumbered obligations of this State or of any political subdivision
10 of the State, or guaranteed by this State.

11 The securities or cash shall be deposited as aforesaid and held to secure the
12 same obligations as would the surety bond, but the depositor shall be entitled to receive
13 all interest and dividends thereon, shall have the right, with the approval of the
14 Commissioner, to substitute other securities for those deposited, and shall be required to
15 do so on written order of the Commissioner made for good cause shown.

16 (c) The surety bond shall remain in effect until cancellation, which may occur
17 only after 90 days' written notice to the Commissioner. Cancellation shall not affect any
18 liability incurred or accrued during that period.

19 (d) The surety bond shall remain in place for no longer than five years after the
20 licensee ceases money transmission operations in the State. However, notwithstanding
21 this provision, the Commissioner may permit the surety bond to be reduced or
22 eliminated prior to that time to the extent that the amount of the licensee's outstanding
23 payment instruments, stored value obligations, and money transmitted in this State is
24 reduced.

25 (e) The surety bond proceeds and any cash or other collateral posted as security
26 by a licensee shall be deemed by operation of law to be held in trust for the benefit of
27 the purchasers and holders of the licensee's outstanding payment instruments, stored
28 value obligations, and money transmissions in the event of the bankruptcy of the
29 licensee.

30 **"§ 53-208.9. Fees.**

31 (a) Investigation and License Fees. – Each application for a license shall be
32 accompanied by a nonrefundable investigation fee of five hundred dollars (\$500.00),
33 together with the initial license fee of one thousand dollars (\$1,000) plus ten dollars
34 (\$10.00) per location within this State at which a money transmission business is to be
35 conducted by the applicant or an authorized delegate.

36 (b) Annual License Fee. – On or before December 31 of each year, each licensee
37 under this Article shall pay to the Commissioner a license fee in the amount of one
38 thousand dollars (\$1,000) plus ten dollars (\$10.00) per location in this State at which the
39 licensee or an authorized delegate is conducting a money transmitter business.

40 (c) Location Fee. – Notwithstanding the number of locations within this State at
41 which a licensee or authorized delegate conducts a money transmitter business, the per
42 location fee provided in subsections (a) and (b) of this section shall not exceed five

1 thousand dollars (\$5,000) per licensee per year. The per year location fee shall be based
2 on the number of locations set forth in the annual report required by G.S. 53-208.11.

3 **"§ 53-208.10. Issuance of license.**

4 (a) Upon the filing of a complete application, the Commissioner shall investigate
5 the financial condition and responsibility, financial and business experience, and the
6 character and general fitness of the applicant. The Commissioner may conduct an on-
7 site investigation of the applicant, the reasonable cost of which shall be borne by the
8 applicant. If the Commissioner finds that the applicant's business will be conducted
9 honestly, fairly, and in a manner commanding the confidence and trust of the
10 community and that the applicant has fulfilled the requirements imposed by this Article
11 and has paid the required license fee, the Commissioner shall issue a license to the
12 applicant authorizing the applicant to engage in the licensed activities in this State. If
13 these requirements have not been met, the Commissioner shall deny the application in a
14 written statement setting forth the reasons for the denial.

15 (b) The Commissioner shall approve or deny every application for an original
16 license within 120 days from the date a complete application is submitted, which period
17 may be extended by the written consent of the applicant. The Commissioner shall notify
18 the applicant of the date when the application is deemed complete. In the absence of
19 approval or denial of the application, or consent to the extension of the 120-day period,
20 the application is deemed approved and the Commissioner shall issue the license
21 effective as of the first day after the 120-day or extended period has elapsed.

22 (c) No license shall be denied except on 10 days' notice to the applicant. Any
23 applicant aggrieved by a denial issued by the Commissioner under this section may at
24 any time within five days from the date of receipt of written notice of the denial, contest
25 the denial by serving a written demand for a hearing on the Commissioner. The serving
26 of a written demand on the Commissioner shall automatically stay the denial until a
27 ruling is issued. The Commissioner shall set a date for a hearing not later than 30 days
28 after service of the response, unless a later date is set with the consent of the applicant.
29 The hearing authorized by this subsection shall be an informal hearing.

30 **"§ 53-208.11. Renewal of license and annual report.**

31 (a) The annual license fee shall be accompanied by a report, in a form prescribed
32 by the Commissioner, to be filed by the licensee on or before December 31 of each year.
33 The licensee shall include all of the following in its annual renewal report:

34 (1) A copy of its most recent audited consolidated annual financial
35 statement, including balance sheet, statement of income or loss,
36 statement of changes in shareholder's equity, and statement of changes
37 in financial position, or, in the case of a licensee that is a wholly
38 owned subsidiary of another corporation, the consolidated audited
39 annual financial statement of the parent corporation may be filed in
40 lieu of the licensee's audited financial statement.

41 (2) For the most recent quarter for which data is available prior to the date
42 of the filing of the renewal application, but in no event more than 120

1 days prior to the renewal date, the licensee shall provide the number of
2 payment instruments sold by the licensee in the State, the dollar
3 amount of those instruments, and the dollar amount of those
4 instruments currently outstanding.

5 (3) Any material changes to any of the information submitted by the
6 licensee on its original application which have not previously been
7 reported to the Commissioner on any other report required to be filed
8 under this Article.

9 (4) A list of the licensee's permissible investments.

10 (5) A list of the locations within this State at which business regulated by
11 this Article is being conducted by either the licensee or its authorized
12 delegates, except for entities exempt under G.S. 53-208.4.

13 (b) A licensee that has not filed a renewal report or paid its annual license fee by
14 the renewal filing deadline and has not been granted an extension of time to do so by the
15 Commissioner shall be notified by the Commission, in writing, that a hearing will be
16 scheduled at which time the licensee will be required to show cause why its license
17 should not be suspended pending compliance with these requirements.

18 **"§ 58-208.12. Quarterly reports.**

19 A licensee shall file for each calendar quarter, no later than 60 days after the quarter
20 has ended, a report which contains the total number of authorized delegates in this State.

21 **"§ 53-208.13. Extraordinary reporting requirements.**

22 (a) Within 15 days of the occurrence of any one of the events listed below, a
23 licensee shall file a written report with the Commissioner describing the event and its
24 expected impact on the licensee's activities in the State:

25 (1) The filing for bankruptcy or reorganization by the licensee.

26 (2) The institution of revocation or suspension proceedings against the
27 licensee by any state or governmental authority with regard to the
28 licensee's money transmission activities.

29 (3) Any felony indictment of the licensee or any of its key officers or
30 directors related to money transmission activities.

31 (4) Any felony conviction of the licensee or any of its key officers or
32 directors related to money transmission activities.

33 (b) A licensee shall update information contained in the original application filed
34 with the Commissioner. If the information contained in the application is or becomes
35 inaccurate in any material respect, the licensee shall file a corrected amendment as soon
36 as practicable, but in no event later than 30 days after the effective date of the material
37 changes.

38 **"§ 53-208.14. Changes in control of a license.**

39 Within 15 days of a change or acquisition of control of a licensee, the licensee shall
40 provide notice of the event to the Commissioner in writing and in a form prescribed by
41 the Commissioner. The notice shall be accompanied by any information, data, and
42 records required by the Commissioner. Notwithstanding the foregoing, the

1 Commissioner may waive this notification requirement if, in the Commissioner's
2 discretion, the change in control does not pose any risk to the interests of the public.

3 **"§ 53-208.15. Examinations.**

4 (a) The Commissioner may conduct an annual on-site examination of a licensee.
5 Should the Commissioner conclude that an on-site examination of a licensee is
6 necessary, the licensee shall pay all reasonably incurred costs of the examination. If the
7 Commissioner determines, based on the licensee's financial statements and past history
8 of operations in the State, that an on-site examination is unnecessary, then the on-site
9 examination may be waived by the Commissioner. An on-site examination may be
10 conducted in conjunction with examinations to be performed by representatives of
11 agencies of another state or states. The Commissioner, in lieu of an on-site examination,
12 may accept the examination report of an agency of another state, or a report prepared by
13 an independent accounting firm, and reports so accepted are considered for all purposes
14 as an official report of the Commissioner. The Commissioner may examine a licensee
15 without prior notice if the Commissioner has a reasonable basis to believe that the
16 licensee is not in compliance with this Article.

17 (b) If the Commissioner has a reasonable basis to believe that the licensee or
18 authorized delegate is not in compliance with this Article, the Commissioner may (i)
19 request financial data from a licensee in addition to that required under G.S. 53-208.11,
20 or (ii) conduct an on-site examination of any authorized delegate or of any location of a
21 licensee within this State without prior notice to the authorized delegate or licensee.
22 When the Commissioner examines an authorized delegate's operations, the authorized
23 delegate shall pay all reasonably incurred costs of the examination. When the
24 Commissioner examines a licensee's location within the State, the licensee shall pay all
25 reasonably incurred costs of the examination.

26 **"§ 53-208.16. Maintenance of records and certificate of authority.**

27 (a) Each licensee shall make, keep, and preserve the following books, accounts,
28 and other records for a period of three years:

29 (1) A record or records of each payment instrument sold.

30 (2) A general ledger containing all assets, liability, capital, income, and
31 expense accounts, which general ledger shall be posted at least
32 monthly.

33 (3) Settlement sheets received from authorized delegates.

34 (4) Bank statements and bank reconciliation records.

35 (5) Records of outstanding payment instruments and stored value.

36 (6) Records of each payment instrument paid within the three-year period.

37 (7) A list of the names and addresses of all of the licensee's authorized
38 delegates, if any.

39 (b) Maintenance of the documents required by this section in a photographic,
40 electronic, or other similar form shall constitute compliance with this section.

41 (c) Records may be maintained at a location other than within this State so long
42 as they are made accessible to the Commissioner on seven days' written notice.

"§ 53-208.17. Confidentiality of data submitted to the Commissioner.

(a) Notwithstanding any other provision of law, all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including (i) all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the Commissioner; and (ii) financial statements, balance sheets, or authorized delegate information are confidential and may not be disclosed by the Commissioner or any officer or employee of the Commissioner. The Commissioner, however, may provide for the release of information to representatives of state or federal agencies who state in writing under oath that they will maintain the confidentiality of the information if: (i) the licensee provides consent prior to the release; or (ii) the Commissioner finds that the release is reasonably necessary for the protection of the public or in the interests of justice.

(b) Nothing in this section shall prohibit the Commissioner from releasing to the public a list of persons licensed under this Article or aggregated financial data on those licenses.

"§ 53-208.18. Suspension or revocation of licenses.

After notice and hearing, the Commissioner may suspend or revoke a license issued under this Article if the Commissioner finds any of the following:

- (1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.
- (2) The licensee's net worth becomes inadequate and the licensee, after 10 days' written notice from the Commissioner, fails to take such steps as the Commissioner deems necessary to remedy the deficiency.
- (3) The licensee knowingly violates any material provision of this Article or any rule or order validly adopted by the Commissioner under authority of this title.
- (4) The licensee is conducting its business in an unsafe or unsound manner.
- (5) The licensee is insolvent.
- (6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.
- (7) The licensee has applied for an adjudication for bankruptcy, reorganization, arrangement, or other relief under any bankruptcy.
- (8) The licensee refuses to permit the Commissioner to make any examination authorized by this Article.
- (9) The licensee willfully fails to make any report required by this Article.

"§ 53-208.19. Authorized delegate contracts.

1 Licensees desiring to conduct licensed activities through authorized delegates in this
2 State shall authorize each delegate to operate pursuant to an express written contract,
3 which shall provide the following:

4 (1) That the licensee appoints the person as its delegate with authority to
5 engage in money transmission on behalf of the licensee.

6 (2) That neither a licensee nor an authorized delegate may authorize
7 subdelegates without the written consent of the Commissioner.

8 (3) That licensees are subject to supervision and regulation by the
9 Commissioner.

10 (4) A licensee shall issue a certificate of authority for each location at
11 which it conducts licensed activities in this State through authorized
12 delegates. The certificate shall be posted in public view at each
13 location and shall state as follows: "Money transmission on behalf of
14 (licensee) is conducted at this location pursuant to the Money
15 Transmitters Act."

16 **§ 53-208.20. Authorized delegate conduct.**

17 (a) An authorized delegate shall not make any fraudulent or false statement or
18 misrepresentation to a licensee or to the Commissioner.

19 (b) All money transmission or sale or issuance of payment instrument activities
20 conducted by authorized delegates shall be strictly in accordance with the licensee's
21 written procedures provided to the authorized delegates.

22 (c) An authorized delegate shall remit all money owing to the licensee in
23 accordance with the terms of the contract between the licensee and the authorized
24 delegate. The failure of an authorized delegate to remit all money owing to a licensee
25 within the time presented shall result in liability of the authorized delegates to the
26 licensee for three times the licensee's actual damages. The Commissioner may set, by
27 regulation, the maximum remittance time.

28 (d) An authorized delegate is deemed to consent to the Commissioner's
29 inspection, with or without prior notice to the licensee or authorized delegate, of the
30 books and records of the authorized delegate of the licensee when the Commissioner
31 has a reasonable basis to believe that the licensee or authorized delegate is not in
32 compliance with this Article.

33 (e) An authorized delegate is under a duty to act only as authorized under the
34 contract with the licensee. An authorized delegate who exceeds its authority is subject to
35 cancellation of its contract and further disciplinary action by the Commissioner.

36 (f) All funds, less fees, received by an authorized delegate of a licensee from the
37 sale or delivery of a payment instrument or stored value issued by a licensee or received
38 by an authorized delegate for transmission shall constitute trust funds owned by and
39 belonging to the licensee from the time the funds are received by the authorized
40 delegate until the time when the funds or an equivalent amount are remitted by the
41 authorized delegate to the licensee. If an authorized delegate commingles any funds
42 with any other funds or property owned or controlled by the authorized delegate, all

1 commingled proceeds and other property shall be impressed with a trust in favor of the
2 licensee in an amount equal to the amount of the proceeds due the licensee.

3 (g) An authorized delegate shall report to the licensee the theft or loss of payment
4 instruments within 24 hours from the time it knew or should have known of the theft or
5 loss.

6 (h) An authorized delegate shall prominently post the certificate of authority
7 specified in G.S. 53-208.19 at each location at which it conducts licensed activities in
8 this State.

9 **"§ 53-208.21. Revocation or suspension of authorized delegates.**

10 (a) If, after notice and a hearing, the Commissioner finds that any authorized
11 delegate of a licensee or any director, officer, employee, or controlling person of the
12 authorized delegate: (i) has violated any provision of this Article or of any rule or
13 regulation or order issued under this Article; (ii) has engaged or participated in any
14 unsafe or unsound act with respect to the business of selling or issuing payment
15 instruments of the licensee or the business of money transmission; or (iii) has made or
16 caused to be made in any application or report filed with the Commissioner or in any
17 proceeding before the Commissioner, any statement which was at the time and in the
18 circumstances under which it was made, false or misleading with respect to any material
19 fact, or has omitted to state in any application or report any material fact which is
20 required to be stated therein, the Commissioner may issue an order suspending or
21 barring the authorized delegate from continuing to be or becoming an authorized
22 delegate of any licensee during the period for which the order is in effect. Upon
23 issuance of the order, the licensee shall terminate its relationship with the authorized
24 delegate according to the terms of the order.

25 (b) Any authorized delegate to whom an order is issued under this section may
26 apply to the Commissioner to modify or rescind the order. The Commissioner shall not
27 grant the application unless the Commissioner finds that (i) it is in the public interest to
28 do so, and (ii) it is reasonable to believe that the person will comply with all applicable
29 provision of this Article and of any regulation and order issued under this Article if and
30 when that person is permitted to resume being an authorized delegate of a licensee. The
31 right of any authorized delegate to whom an order is issued under this section to petition
32 for judicial review of the order shall not be affected by the failure of the person to apply
33 to the Commissioner to modify or rescind the order.

34 **"§ 53-208.22. Licensee liability.**

35 A licensee's responsibility to any person for a money transmission conducted on that
36 person's behalf by the licensee or the licensee's authorized delegate shall be limited to
37 the amount of money transmitted or the face amount of the payment instrument
38 purchased.

39 **"§ 53-208.23. Hearings - procedures.**

40 Except as provided by G.S. 53-208.10(c), hearings conducted pursuant to this
41 Article shall proceed in accordance with Article 3A of Chapter 150B of the General
42 Statutes.

"§ 53-208.24. Civil penalties.

(a) If, after notice and hearing, the Commissioner finds that a person has intentionally violated this Article or a rule adopted under this Article, the Commissioner may order the person to pay to the Commissioner a civil penalty in an amount specified by the Commissioner, not to exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues. No proceeding shall be initiated and no penalty shall be assessed pursuant to this section until after the person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

(b) The Commissioner, in the exercise of the Commissioner's reasonable judgment may compromise, settle, and collect civil penalties with any person for violations of any provision of this Article, or of any rule, regulation, or order issued or promulgated to this Article.

"§ 53-208.25. Enforcement.

(a) If it appears to the Commissioner that any person has committed or is about to commit a violation of any provision of this Article or of any rule or order of the Commissioner, the Commissioner may apply to the Wake County Superior Court for an order enjoining the person from violating or continuing to violate this Article or any rule, regulation, or order and for injunctive or such other relief as the nature of the case may require.

(b) The Commissioner may enter into consent orders at any time with any person to resolve any matter arising under this Article. A consent order shall be signed by the person to whom it is issued or a duly authorized representative and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this Article, or any rule, regulation, or order promulgated or issued thereunder has been violated, nor need it constitute a finding by the Commissioner that the person has violated any provision of this Article or any rule, regulation, or order promulgated or issued thereunder.

(c) Notwithstanding the issuance of a consent order, the Commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the Commissioner from so doing.

"§ 53-208.26. Criminal penalties.

(a) Any person who knowingly and willfully violates any provision of this Article for which a penalty is not specifically provided is guilty of a Class 1 misdemeanor.

(b) Any person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this Article with the intent to deceive the recipient of the document is guilty of a Class I felony.

(c) Any person who knowingly and willfully engages in the business of money transmission without a license as provided herein shall be guilty of a Class I felony.

1 **"§ 53-208.27. Rules.**

2 (a) The Banking Commission may adopt rules necessary to implement this
3 Article.

4 (b) The Banking Commission may review any rule, regulation, order, or act of
5 the Commissioner done pursuant to or with respect to the provisions of this Article; and
6 any person aggrieved by any such rule, regulation, order, or act may appeal to the
7 Commission for review upon providing notice in writing within 20 days after any rule,
8 regulation, order, or act complained of is adopted, issued, or done. Notwithstanding any
9 other provision of law, any aggrieved party to a decision of the Banking Commission
10 shall be entitled to an appeal pursuant to G.S. 53-92.

11 **"§ 53-208.28. Severability.**

12 Should any provision, sentence, clause, section, or part of this Article for any reason
13 be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or
14 invalidity shall not affect or impair any of the remaining provisions, sentences, clauses,
15 sections, or part of this Article.

16 **"§ 53-208.29. Appointment of Secretary of State as agent for service of process.**

17 (a) Any licensee, authorized delegate, or other person who knowingly engages in
18 business activities that are regulated under this Article, with or without filing an
19 application, is deemed to have done both of the following:

- 20 (1) Consented to the jurisdiction of the courts of this State for all actions
21 arising under this Article; and
22 (2) Appointed the Secretary of State as such person's agent for the purpose
23 of accepting service of process in any action, suit, or proceeding that
24 may arise under this Article.

25 (b) Within three business days after service of process upon the Secretary of
26 State, the Secretary shall transmit by certified mail copies of all lawful process accepted
27 by the Secretary as an agent of that person at its last known address. Service of process
28 shall be considered complete three business days after the Commissioner deposits
29 copies of the documents in the United States mail.

30 **"§ 53-208.30. Transition.**

31 Any person who holds in good standing a money transmitters license issued by the
32 Commissioner of Banks on October 1, 2001, may continue to engage in such business
33 subject to the renewal requirements of G.S. 53-208.11, and upon renewal, proof that the
34 licensee meets the net worth requirements of G.S. 53-208.5(a), and the bonding or other
35 security requirements of G.S. 53-208.8."

36 **SECTION 3.** G.S. 53-99(b)(7a) reads as rewritten:

37 "(7a) Records of examinations and investigations of licensees under the ~~Sale~~
38 ~~of Checks Act, Article 16~~ Money Transmitters Act, Article 16A of this
39 Chapter;"

40 **SECTION 4.** G.S. 53-277 reads as rewritten:

41 **"§ 53-277. Exemptions.**

42 (a) This Article shall not apply to:

1 (1) A bank, savings institution, credit union, or farm credit system
2 organized under the laws of the United States or any state; and

3 (2) Any person or entity principally engaged in the bona fide retail sale of
4 goods or services, who either as an incident to or independently of a
5 retail sale or service and not holding itself out to be a check-cashing
6 service, from time to time cashes checks, drafts, or money orders for a
7 fee or other consideration, where not more than two dollars (\$2.00) is
8 charged for the service.

9 (b) A person licensed under Article ~~16~~16A of this Chapter (Money Transmitters
10 Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee
11 for purposes of the remaining provisions of this Article. This exemption does not apply
12 to an ~~agent~~authorized agent of a person licensed under Article ~~16~~16A of this Chapter."

13 **SECTION 5.** This act becomes effective October 1, 2001, and applies to
14 contracts entered into on or after that date.