

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 890 (2nd Edition)

SHORT TITLE: Money Transmitters Act

SPONSOR(S): Senators Hagan; Carpenter, Hoyle, Metcalf, and Warren

FISCAL IMPACT

Yes () No () No Estimate Available (X)

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUE

EXPENDITURES

Department of Correction – No estimate available

Judicial Branch – No estimate available

Banking Commission – No estimate available

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Correction, Judicial Branch, Banking Commission

EFFECTIVE DATE: This act becomes effective October 1, 2001, and applies to contracts entered into on or after that date.

BILL SUMMARY

This bill repeals current Article 16 (“Money Transmitters Act”) of Chapter 53 (Banking) and replaces it with new Article 16A, which is also entitled “Money Transmitters Act”. The bill would apply to persons licensed to engage in the business of money transmission in this State at one or more locations, directly or indirectly owned, or through authorized delegates. “Money transmission” in the bill is defined as (i) the sale or issuance of payment instruments or stored value, or (ii) the act of engaging in the business of receiving money or monetary value for transmission within the United States or to locations abroad by any and all means.

Some examples of businesses covered under the bill include non-bank entities that issue and sell checks, money orders, travelers' checks, or arrange for the transmission of money. The bill broadens its application to entities that have Internet sites, from a location inside or

outside this state in which North Carolina citizens may access in order to enter into a money transmission transaction. On and after October 1, 2001, a license will be required from the Commissioner of Banks to engage in the business of money transmission within the state. Federal, state, and local governments are exempt, as are banks, credit unions, and savings and loan associations.

In addition, the bill stipulates license qualifications, permissible investments, application procedures and fees, and bonding requirements. Specifically, the net worth required of a licensee is \$100,000; and for licensees having more than one location they must have an additional net worth of \$10,000 per location (not to exceed \$500,000). Each application for license requires a \$500 investigation fee, and \$1,000 annual application fee plus \$10 per location (location fee not to exceed \$5,000).

Violations of the Article are enforceable by civil penalties of up to \$1,000 per violation. The Act also creates two Class I felonies – one for money transmission without a license, and the other for providing false statements with intent to deceive in filings. Any other violation of the Act is a Class 1 misdemeanor.

The bill creates new G.S. 53-208.25 that would allow the Commissioner to apply to the Wake County Superior Court for an order enjoining any person from violations and for injunctive or such other relief as the nature of the case may require if it appears to the Commissioner that a person has committed or is about to commit a violation of any provision of this Article or any rule or order of the Commissioner.

ASSUMPTIONS AND METHODOLOGY:

Banking Commission

The North Carolina Banking Commission reports that 41 companies are licensed as money transmitters. This bill will expand the Banking Commission's regulatory reach to Internet companies that do electronic transfers of money. However, this bill does not change the investigation and license fees charged by the Banking Commission. Commission officials are not able to estimate the number of firms that will be licensed by this act.

Department of Correction

This bill makes it a Class I felony for any person to knowingly and willfully make a false statement in any document filed or required to be filed under this Article with the intent to deceive the recipient of the document; or to knowingly and willfully engage in the business of money transmission without a license. The bill also broadens the scope of application to include entities with Internet sites that are accessible by North Carolina citizens.

Under current law, a violation of Article 16 is a Class 1 misdemeanor. Under this bill, some cases currently disposed of as Class 1 misdemeanors in district court would instead be disposed of as Class I felonies in superior court, which could mean longer sentences upon conviction, and more time and cost in disposing of cases. Therefore, depending on the scope and enforcement of this expansion, there could be a significant impact on the courts and prison system.

Fiscal Research believes there could be some impact on the prison system given the expansion in scope, and since offenders convicted of a Class I felony can receive an active

prison sentence. However, the Sentencing Commission does not have any historical data from which to estimate how many offenders might be sentenced. Because of the lack of data, there is no estimate available of the fiscal impact of SB890 on the prison population. It should be noted, however, if there were five convictions for a Class I offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Any active sentence would create the need for an additional prison bed and would have a fiscal impact on the Department of Correction because there are no surplus prison beds available for the five-year fiscal note horizon and beyond. **(13% of Class I felons received an active sentence in FY 1999/2000, with an average sentence length of six months.)**

Any other violation of the Article, for which a penalty is not specified, is a Class 1 misdemeanor. In these cases, Fiscal Research does not expect a fiscal impact on the prison population given the misdemeanor penalty. In FY 1999/2000, 15% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence length imposed was 45 days. Offenders serving active sentences of 90 days or less are housed in county jails.

Judicial Branch

As a result of the two new Class I felonies and broadening the scope of application, the Administrative Office of the Courts (AOC) indicates that they might see an increase in time and cost in disposing of cases. However, they do not have available data to estimate the number of such charges. Further, the AOC does not have an offense code for the current law, which indicates that relatively few charges are filed.

The AOC also indicates that while they might expect an increase in the workload of Wake County superior court judges as a result of new G.S. 53-208.25 under the bill, they do not have available data to estimate the number of such violations. Additionally, data are not available on the extent to which expanded civil penalties may affect the courts under the bill.

SOURCES OF DATA: Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Lisa Robinson and Richard Bostic

APPROVED BY: James D. Johnson

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