

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 890

Short Title: Money Transmitters Act.

(Public)

Sponsors: Senators Hagan; Carpenter, Hoyle, Metcalf, and Warren.

Referred to: Judiciary II.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NORTH CAROLINA MONEY TRANSMITTERS ACT,
ARTICLE 16 OF CHAPTER 53 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

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 Article 16 of Chapter 53 of the General Statutes, G.S. 53-192 through G.S. 53-208, is hereby repealed.

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

"Article 16A.

"Money Transmitters Act.

"§ 53-208.1. Citation of Article.

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

"§ 53-208.2. Definitions.

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

- (1) 'Applicant' means a person filing an application for a license under this Article.
- (2) 'Authorized delegate' means an entity designated by the licensee under the provisions of this Article to sell or issue payment instruments or stored value or engage in the business of transmitting money on behalf of a licensee.
- (3) 'Commissioner' means the Commissioner of Banks of the State of North Carolina.
- (4) 'Control' means ownership of, or the power to vote, ten percent (10%) or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee 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.
- 43 (15) 'Person' means any individual, partnership, association, joint-stock
44 association, trust, or corporation.

1 (16) 'Remit' means either to make direct payment of the funds to the
2 licensee or its representatives authorized to receive those funds, or to
3 deposit the funds in a bank, credit union, or savings and loan
4 association or other similar financial institution in an account specified
5 by the licensee.

6 (17) 'Permissible investments' means all of the following:

- 7 a. Cash.
8 b. Certificates of deposit or other debt obligations of a financial
9 institution, either domestic or foreign.
10 c. Bills of exchange or time drafts drawn on and accepted by a
11 commercial bank, otherwise known as bankers' acceptances,
12 which are eligible for purchase by member banks of the Federal
13 Reserve System.
14 d. Any investment bearing a rating of one of the three highest
15 grades as defined by a nationally recognized organization that
16 rates securities.
17 e. Investment securities that are obligations of the United States,
18 its agencies, or instrumentalities, or obligations that are
19 guaranteed fully as to principal and interest of the United States,
20 or any obligations of any state, municipality, or any political
21 subdivision thereof.
22 f. Shares in a money market mutual fund, interest-bearing bills or
23 notes or bonds, debentures, or preferred stock traded on any
24 national securities exchange or on a national over-the-counter
25 market, or mutual funds primarily composed of such securities
26 or a fund composed of one or more permissible investments as
27 set forth herein.
28 g. Any demand borrowing agreement or agreements made to a
29 corporation or a subsidiary of a corporation whose capital stock
30 is listed on a national exchange.
31 h. Receivables due to a licensee from its authorized delegates
32 pursuant to a contract described in G.S. 53-208.20, which are
33 not past due or doubtful of collection.
34 i. Any other investments or security device approved by the
35 Commissioner.

36 (18) 'Stored value' means monetary value that is evidenced by an electronic
37 record.

38 **"§ 53-208.3. License required.**

39 (a) On or after October 1, 2001, no person except those exempt pursuant to G.S.
40 53-208.4 shall engage in the business of money transmission in this State without a
41 license as provided in this Article.

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

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

5 **"§ 53-208.4. Exemptions.**

6 (a) This Article shall not apply to:

7 (1) The United States or any department, agency, or instrumentality
8 thereof;

9 (2) The United States Post Office;

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

11 (4) Banks, credit unions, savings and loan associations, savings banks or
12 mutual banks organized under the laws of any state or the United
13 States, provided that they do not issue or sell payment instruments
14 through authorized delegates that are not banks, bank holding
15 companies, credit unions, savings and loan associations, savings banks
16 or mutual banks; and

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

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

25 **"§ 53-208.5. License qualifications.**

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

35 (b) Every corporate applicant, at the time of filing of an application for license
36 under this Article and at all times after a license is issued, shall be in good standing in
37 the state of its incorporation and, if required by the North Carolina Business
38 Corporations Act, Chapter 55 of the General Statutes, shall be registered or qualified to
39 do business in this State. All noncorporate applicants shall, at the time of the filing of an
40 application for a license under this Article and at all times after a license is issued, be
41 registered or qualified to do business in the State as required by law.

42 **"§ 53-208.6. Permissible investments and statutory trust.**

43 (a) Each licensee under this Article shall possess at all times unencumbered
44 permissible investments having an aggregate market value, calculated in accordance

1 with generally accepted accounting principles, of not less than the aggregate face
2 amount of all outstanding payment instruments and stored value obligations issued or
3 sold. This requirement may be waived by the Commissioner if the dollar volume of a
4 licensee's outstanding payment instruments and stored value do not exceed the bond or
5 other security devices posted by the licensee pursuant to G.S. 53-208.8.

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

10 **"§ 53-208.7. License application.**

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

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

35 (b) If the applicant is a corporation, the applicant shall also provide:

- 36 (1) The date of the applicant's incorporation and state of incorporation.
- 37 (2) A certificate of good standing from the state in which the applicant
38 was incorporated.
- 39 (3) A certificate of authority from the Secretary of State to conduct
40 business in this State, if required by the North Carolina Business
41 Corporations Act, Chapter 55 of the General Statutes.
- 42 (4) A description of the corporate structure of the applicant, including the
43 identity of any parent or subsidiary of the applicant, and the disclosure

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

1 individual who exercises supervisory responsibility with respect to the
2 applicant's activities.

- 3 (4) Copies of the applicant's audited financial statements, including
4 balance sheet, statement of income or loss, and statement of changes in
5 financial position, for the current year and, if available, for the
6 immediately preceding two-year period.

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

11 **"§ 53-208.8. Surety bond.**

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

29 (b) In lieu of a surety bond, the licensee may deposit with the Commissioner, or
30 with any bank in this State designated by the licensee and approved by the
31 Commissioner, to an aggregate amount, based upon principal amount or market value,
32 whichever is lower, of not less than the amount of the surety bond or portion thereof, the
33 following:

- 34 (1) Unencumbered cash.
35 (2) Unencumbered interest-bearing bonds.
36 (3) Unencumbered notes.
37 (4) Unencumbered debentures.
38 (5) Unencumbered obligations of the United States or any agency or
39 instrumentality thereof, or guaranteed by the United States.
40 (6) Unencumbered obligations of this State or of any political subdivision
41 of the State, or guaranteed by this State.

42 The securities or cash shall be deposited as aforesaid and held to secure the
43 same obligations as would the surety bond, but the depositor shall be entitled to receive
44 all interest and dividends thereon, shall have the right, with the approval of the

1 Commissioner, to substitute other securities for those deposited, and shall be required to
2 do so on written order of the Commissioner made for good cause shown.

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

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

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

17 **"§ 53-208.9. Fees.**

18 (a) Investigation and License Fees. – Each application for a license shall be
19 accompanied by a nonrefundable investigation fee of five hundred dollars (\$500.00),
20 together with the initial license fee of one thousand dollars (\$1,000) plus ten dollars
21 (\$10.00) per location within this State at which a money transmission business is to be
22 conducted by the applicant or an authorized delegate.

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

27 (c) Location Fee. – Notwithstanding the number of locations within this State at
28 which a licensee or authorized delegate conducts a money transmitter business, the per
29 location fee provided in subsections (a) and (b) of this section shall not exceed five
30 thousand dollars (\$5,000) per licensee per year. The per year location fee shall be based
31 on the number of locations set forth in the annual report required by G.S. 53–208.11.

32 **"§ 53-208.10. Issuance of license.**

33 (a) Upon the filing of a complete application, the Commissioner shall investigate
34 the financial condition and responsibility, financial and business experience, and the
35 character and general fitness of the applicant. The Commissioner may conduct an on–
36 site investigation of the applicant, the reasonable cost of which shall be borne by the
37 applicant. If the Commissioner finds that the applicant's business will be conducted
38 honestly, fairly, and in a manner commanding the confidence and trust of the
39 community and that the applicant has fulfilled the requirements imposed by this Article
40 and has paid the required license fee, the Commissioner shall issue a license to the
41 applicant authorizing the applicant to engage in the licensed activities in this State. If
42 these requirements have not been met, the Commissioner shall deny the application in a
43 written statement setting forth the reasons for the denial.

1 **(b)** The Commissioner shall approve or deny every application for an original
2 license within 120 days from the date a complete application is submitted, which period
3 may be extended by the written consent of the applicant. The Commissioner shall notify
4 the applicant of the date when the application is deemed complete. In the absence of
5 approval or denial of the application, or consent to the extension of the 120-day period,
6 the application is deemed approved and the Commissioner shall issue the license
7 effective as of the first day after the 120-day or extended period has elapsed.

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

16 **"§ 53-208.11. Renewal of license and annual report.**

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

20 **(1)** A copy of its most recent audited consolidated annual financial
21 statement, including balance sheet, statement of income or loss,
22 statement of changes in shareholder's equity, and statement of changes
23 in financial position, or, in the case of a licensee that is a wholly
24 owned subsidiary of another corporation, the consolidated audited
25 annual financial statement of the parent corporation may be filed in
26 lieu of the licensee's audited financial statement.

27 **(2)** For the most recent quarter for which data is available prior to the date
28 of the filing of the renewal application, but in no event more than 120
29 days prior to the renewal date, the licensee shall provide the number of
30 payment instruments sold by the licensee in the State, the dollar
31 amount of those instruments, and the dollar amount of those
32 instruments currently outstanding.

33 **(3)** Any material changes to any of the information submitted by the
34 licensee on its original application which have not previously been
35 reported to the Commissioner on any other report required to be filed
36 under this Article.

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

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

41 **(b)** A licensee that has not filed a renewal report or paid its renewal fee by the
42 renewal filing deadline and has not been granted an extension of time to do so by the
43 Commissioner shall be notified by the Commission, in writing, that a hearing will be

1 scheduled at which time the licensee will be required to show cause why its license
2 should not be suspended pending compliance with these requirements.

3 **"§ 58-208.12. Quarterly reports.**

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

6 **"§ 53-208.13. Extraordinary reporting requirements.**

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

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

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

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

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

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

23 **"§ 53-208.14. Changes in control of a license.**

24 Within 15 days of a change or acquisition of control of a licensee, the licensee shall
25 provide notice of the event to the Commissioner in writing and in a form prescribed by
26 the Commissioner. The notice shall be accompanied by any information, data, and
27 records required by the Commissioner. Notwithstanding the foregoing, the
28 Commissioner may waive this notification requirement if, in the Commissioner's
29 discretion, the change in control does not pose any risk to the interests of the public.

30 **"§ 53-208.15. Examinations.**

31 (a) The Commissioner may conduct an annual on-site examination of a licensee.
32 Should the Commissioner conclude that an on-site examination of a licensee is
33 necessary, the licensee shall pay all reasonably incurred costs of the examination. If the
34 Commissioner determines, based on the licensee's financial statements and past history
35 of operations in the State, that an on-site examination is unnecessary, then the on-site
36 examination may be waived by the Commissioner. An on-site examination may be
37 conducted in conjunction with examinations to be performed by representatives of
38 agencies of another state or states. The Commissioner, in lieu of an on-site examination,
39 may accept the examination report of an agency of another state, or a report prepared by
40 an independent accounting firm, and reports so accepted are considered for all purposes
41 as an official report of the Commissioner. The Commissioner may examine a license
42 without prior notice if the Commissioner has a reasonable basis to believe that the
43 licensee is not in compliance with this Article.

1 **(b)** If the Commissioner has a reasonable basis to believe that the licensee or
2 authorized delegate is not in compliance with this Article, the Commissioner may (i)
3 request financial data from a licensee in addition to that required under G.S. 53-208.11,
4 or (ii) conduct an on-site examination of any authorized delegate or of any location of a
5 licensee within this State without prior notice to the authorized delegate or licensee.
6 When the Commissioner examines an authorized delegate's operations, the authorized
7 delegate shall pay all reasonably incurred costs of the examination. When the
8 Commissioner examines a licensee's location within the State, the licensee shall pay all
9 reasonably incurred costs of the examination.

10 **"§ 53-208.16. Maintenance of records and certificate of authority.**

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

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

14 **(2)** A general ledger containing all assets, liability, capital, income, and
15 expense accounts, which general ledger shall be posted at least
16 monthly.

17 **(3)** Settlement sheets received from authorized delegates.

18 **(4)** Bank statements and bank reconciliation records.

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

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

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

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

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

27 **"§ 53-208.17. Confidentiality of data submitted to the Commissioner.**

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

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

44 **"§ 53-208.18. Suspension or revocation of licenses.**

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

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

23 **"§ 53-208.19. Authorized delegate contracts.**

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

- 27 (1) That the licensee appoints the person as its delegate with authority to
28 engage in money transmission on behalf of the licensee.
- 29 (2) That neither a licensee nor an authorized delegate may authorize
30 subdelegates without the written consent of the Commissioner.
- 31 (3) That licensees are subject to supervision and regulation by the
32 Commissioner.
- 33 (4) A licensee shall issue a certificate of authority for each location at
34 which it conducts licensed activities in this State through authorized
35 delegates. The certificate shall be posted in public view at each
36 location and shall state as follows: "Money transmission on behalf of
37 (licensee) is conducted at this location pursuant to the Money
38 Transmitters Act."

39 **"§ 53-208.20. Authorized delegate conduct.**

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

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

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

7 (d) An authorized delegate is deemed to consent to the Commissioner's
8 inspection, with or without prior notice to the licensee or authorized delegate, of the
9 books and records of the authorized delegate of the licensee when the Commissioner
10 has a reasonable basis to believe that the licensee or authorized delegate is not in
11 compliance with this Article.

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

15 (f) All funds, less fees, received by an authorized delegate of a licensee from the
16 sale or delivery of a payment instrument or stored value issued by a licensee or received
17 by an authorized delegate for transmission shall constitute trust funds owned by and
18 belonging to the licensee from the time the funds are received by the authorized
19 delegate until the time when the funds or an equivalent amount are remitted by the
20 authorized delegate to the licensee. If an authorized delegate commingles any funds
21 with any other funds or property owned or controlled by the authorized delegate, all
22 commingled proceeds and other property shall be impressed with a trust in favor of the
23 licensee in an amount equal to the amount of the proceeds due the licensee.

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

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

30 **"§ 53-208.21. Revocation or suspension of authorized delegates.**

31 (a) If, after notice and a hearing, the Commissioner finds that any authorized
32 delegate of a licensee or any director, officer, employee, or controlling person of the
33 authorized delegate: (i) has violated any provision of this Article or of any rule or
34 regulation or order issued under this Article; (ii) has engaged or participated in any
35 unsafe or unsound act with respect to the business of selling or issuing payment
36 instruments of the licensee or the business of money transmission; or (iii) has made or
37 caused to be made in any application or report filed with the Commissioner or in any
38 proceeding before the Commissioner, any statement which was at the time and in the
39 circumstances under which it was made, false or misleading with respect to any material
40 fact, or has omitted to state in any application or report any material fact which is
41 required to be stated therein, the Commissioner may issue an order suspending or
42 barring the authorized delegate from continuing to be or becoming an authorized
43 delegate of any licensee during the period for which the order is in effect. Upon

1 issuance of the order, the licensee shall terminate its relationship with the authorized
2 delegate according to the terms of the order.

3 (b) Any authorized delegate to whom an order is issued under this section may
4 apply to the Commissioner to modify or rescind the order. The Commissioner shall not
5 grant the application unless the Commissioner finds that (i) it is in the public interest to
6 do so, and (ii) it is reasonable to believe that the person will comply with all applicable
7 provision of this Article and of any regulation and order issued under this Article if and
8 when that person is permitted to resume being an authorized delegate of a licensee. The
9 right of any authorized delegate to whom an order is issued under this section to petition
10 for judicial review of the order shall not be affected by the failure of the person to apply
11 to the Commissioner to modify or rescind the order.

12 **"§ 53-208.22. Licensee liability.**

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

17 **"§ 53-208.23. Hearings - procedures.**

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

21 **"§ 53-208.24. Civil penalties.**

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

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

35 **"§ 53-208.25. Enforcement.**

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

42 (b) The Commissioner may enter into consent orders at any time with any person
43 to resolve any matter arising under this Article. A consent order shall be signed by the
44 person to whom it is issued or a duly authorized representative and shall indicate

1 agreement to the terms contained therein. A consent order need not constitute an
2 admission by any person that any provision of this Article, or any rule, regulation, or
3 order promulgated or issued thereunder has been violated, nor need it constitute a
4 finding by the Commissioner that the person has violated any provision of this Article
5 or any rule, regulation, or order promulgated or issued thereunder.

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

10 **"§ 53-208.26. Criminal penalties.**

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

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

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

19 **"§ 53-208.27. Rules.**

20 (a) The Banking Commission may adopt rules necessary to implement this
21 Article.

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

29 **"§ 53-208.28. Severability.**

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

34 **"§ 53-208.29. Appointment of Secretary of State as agent for service of process.**

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

38 (1) Consented to the jurisdiction of the courts of this State for all actions
39 arising under this Article; and

40 (2) Appointed the Secretary of State as such person's agent for the purpose
41 of accepting service of process in any action, suit, or proceeding that
42 may arise under this Article.

43 (b) Within three business days after service of process upon the Secretary of
44 State, the Secretary shall transmit by certified mail copies of all lawful process accepted

1 by the Secretary as an agent of that person at its last known address. Service of process
2 shall be considered complete three business days after the Commissioner deposits
3 copies of the documents in the United States mail.

4 **"§ 53-208.30. Transition.**

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

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

11 "(7a) Records of examinations and investigations of licensees under the ~~Sale~~
12 ~~of Checks Act, Article 16~~ Money Transmitters Act, Article 16A of this
13 Chapter;"

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

15 **"§ 53-277. Exemptions.**

16 (a) This Article shall not apply to:

- 17 (1) A bank, savings institution, credit union, or farm credit system
18 organized under the laws of the United States or any state; and
19 (2) Any person or entity principally engaged in the bona fide retail sale of
20 goods or services, who either as an incident to or independently of a
21 retail sale or service and not holding itself out to be a check-cashing
22 service, from time to time cashes checks, drafts, or money orders for a
23 fee or other consideration, where not more than two dollars (\$2.00) is
24 charged for the service.

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

30 **SECTION 5.** G.S. 54-73 reads as rewritten:

31 **"§ 54-73. Banking laws applicable.**

32 The statutes relating to banks and banking in this State, that is, ~~G.S. 53-1 to 53-158~~
33 ~~[G.S. 53-1 to 53-208]~~, G.S. 53-1 to G.S. 53-208.30, insofar as applicable and not in
34 conflict with the provisions hereof shall apply to land mortgage associations."

35 **SECTION 6.** This act becomes effective October 1, 2001, and applies to
36 contracts entered into on or after that date.