

Article 16B.

Money Transmitters Act.

**§ 53-208.41. Title.**

This act may be cited as the "North Carolina Money Transmitters Act." (2016-81, s. 1.)

**§ 53-208.42. Definitions.**

For purposes of this Article, the following definitions apply:

- (1) Applicant. – A person filing an application for a license under this Article.
- (2) Authorized delegate. – An entity designated by the licensee under the provisions of this Article to engage in the business of money transmission on behalf of a licensee from a branch office in this State.
- (3) Branch office. – Any physical retail location within this State operated by the licensee or the licensee's authorized delegate at which the licensee engages in the business of money transmission. For the purposes of this Article, this includes automated kiosks.
- (4) Commissioner. – The Commissioner of Banks of the State of North Carolina.
- (5) Control. – The power, directly or indirectly, to direct the management or policy of the licensee or person subject to this Article, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has ownership of or the power to vote ten percent (10%) or more of a class of outstanding voting securities; (iii) in the case of a limited liability company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the licensee or person subject to this Article.
- (6) Controlling person. – Any person in control of a licensee or person subject to this Article.
- (7) Depository institution. – Any bank, savings association, mutual savings bank, savings bank, or other institution as defined in Section 3 of the Federal Deposit Insurance Act and any credit union whose share and deposit accounts are insured by the National Credit Union Administration under the Federal Credit Union Act.
- (8) Engage in the business of. – For compensation or gain, or in expectation of compensation or gain, either directly or indirectly, to make available monetary transmission services to North Carolina consumers for personal, family, or household purposes.
- (9) Executive officer. – The chief executive officer, chief operating officer, chief financial officer, chief compliance officer, chief technology officer, or any other individual the Commissioner identifies who exercises significant influence over, or participates in, major policy making decisions of the applicant or licensee without regard to title, salary, or compensation.
- (10) Licensee. – A person licensed under this Article.
- (11) Material litigation. – Any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents.

- (12) Monetary value. – A medium of exchange, whether or not redeemable in money.
- (13) Money transmission. – To engage in the business of any of the following:
- a. Sale or issuance of payment instruments or stored value primarily for personal, family, or household purposes; or
  - b. Receiving money or monetary value for transmission or holding funds incidental to transmission within the United States or to locations abroad by any and all means, including payment instrument, stored value, wire, facsimile, or electronic transfer, primarily for personal, family, or household purposes. This includes maintaining control of virtual currency on behalf of others.
- (14) NMLS. – The Nationwide Mortgage Licensing System and Registry or its successors.
- (15) Outstanding transmission obligation. –
- a. Any payment instrument or stored value issued by the licensee which has been sold in the United States directly by the licensee, or any payment instrument or stored value issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, but in either case has not yet been paid or refunded by the licensee.
  - b. Any money or monetary value received by the licensee for transmission that has not been remitted to the payee or refunded to the sender.
- To the extent that the outstanding transmission obligation was received in virtual currency, for the purposes of compliance with this Article, the obligation shall be denominated in the amount or value to be transmitted to the payee.
- (16) Payment instrument. – A check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer exclusively in goods or services.
- (17) Permissible investments. – One or more of the following, but only to the extent that they are maintained in an account located in the United States:
- a. Cash.
  - b. Certificates of deposit or other debt obligations of a depository institution, either domestic or foreign.
  - c. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System.
  - d. Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities.
  - e. Investment securities that are obligations of the United States, its agencies, or instrumentalities or obligations that are guaranteed fully as to principal and interest of the United States or any obligations of any state, municipality, or any political subdivision thereof.

- f. Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures, or preferred stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one or more permissible investments as set forth herein.
  - g. Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange.
  - h. Value of receivables due to the licensee that are no more than 90 days past due or otherwise doubtful of collection.
  - i. Virtual currency owned by the licensee, but only to the extent of outstanding transmission obligations received by the licensee in like-kind virtual currency.
  - j. Any other investments or security device approved by the Commissioner.
- (18) Person. – Any individual, partnership, limited liability company, limited partnership, association, joint-stock association, trust, corporation, or other group engaged in joint business activities however organized.
- (19) Stored value. – Monetary value representing a claim against the issuer that is stored on an electronic or digital medium and is evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include stored value that is redeemable by the issuer exclusively in goods or services; stored value that is redeemable exclusively in goods or services limited to transactions involving a defined merchant or location or set of locations, such as a specific retailer or retail chain, college campus, or subway system; or program points, miles, or other units issued in connection with a customer affinity or rewards program, even if there is a secondary market for the stored value.
- (20) Virtual currency. – A digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account, or a store of value but only to the extent defined as stored value under G.S. 53-208.42(19), but does not have legal tender status as recognized by the United States Government. (2016-81, s. 1.)

**§ 53-208.43. License requirement.**

(a) No person except those exempt pursuant to G.S. 53-208.44 shall engage in the business of money transmission in this State without a license as provided in this Article.

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

(c) For the purposes of this Article, a person is considered to be engaged in the business of money transmission in this State if that person solicits or advertises money transmission services from a Web site that North Carolina citizens may access in order to enter into those transactions by electronic means. (2016-81, s. 1.)

**§ 53-208.44. Exemptions.**

- (a) This Article shall not apply to any of the following:
- (1) The United States or any department, agency, or instrumentality or by a contractor thereof.
  - (2) The United States Postal Service.
  - (3) The State or any political subdivisions or by a contractor thereof.
  - (4) Banks, credit unions, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States.
  - (5) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.
  - (6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Regulation E, 12 C.F.R. § 1005 et seq., by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.
  - (7) A person that is engaged exclusively in any of the following:
    - a. Delivering wages or salaries on behalf of employers to employees;
    - b. Facilitating the payment of payroll taxes to State and federal agencies;
    - c. Making payments relating to employee benefit plans;
    - d. Making distribution of other authorized deductions from employees' wages or salaries; or
    - e. Transmitting other funds on behalf of an employer in connection with transactions related to employees.
  - (8) A person appointed by a payee to collect and process payments as the bona fide agent of the payee, provided the person can demonstrate to the Commissioner that:
    - a. There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf;
    - b. The payee holds the agent out to the public as accepting payments on the payee's behalf; and
    - c. Payment is treated as received by the payee upon receipt by the agent. This exemption would extend to those otherwise engaged in money transmission as set forth in G.S. 53-208.42(13)b., including those transactions conducted in whole or in part in virtual currency.
- (b) Any person who seeks to engage in the business of money transmission in this State subject to exemption under (a)(7) or (a)(8) of this section shall submit a written request for verification of exemption to the Commissioner. Such request shall be in a form acceptable to the Commissioner and shall include a copy of any written agreement and related documentation that is the basis for the specified exemption.
- (c) Licensees may authorize delegates to engage in money transmission on their behalf subject to this Article subject to an express written agreement, which shall provide the following:
- (1) The licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee in this State.
  - (2) Neither a licensee nor an authorized delegate may authorize sub-delegates without the written consent of the Commissioner.

- (3) Authorized delegates, in their capacity as agents of the licensee, are subject to the supervision and regulation by the Commissioner notwithstanding exemption from licensure.
- (4) The licensee shall issue a certificate of authority for each branch office at which it conducts licensed activities in this State through an authorized delegate, which shall be posted in public view and read as follows: "Money transmission on behalf of (licensee) is conducted at this location pursuant to the North Carolina Money Transmitters Act, N.C.G.S. § 53-208.41 et seq."

Licensees conducting money transmission subject to this Article are required to maintain full charge, control, and supervision of any authorized delegate and are responsible for ensuring any activity undertaken by an authorized delegate on behalf of the licensee is in compliance with this Article.

(d) The Commissioner may, by rule or by order, exempt from all or part of this Article any person, transaction, or class of persons or transactions if the Commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this Article. (2016-81, s. 1.)

#### **§ 53-208.45. License application.**

(a) Applications under this Article shall be filed through the NMLS in a form acceptable to the Commissioner. To be considered complete, all applications shall be verified by oath or affirmation of the applicant or a designee thereof and shall contain:

- (1) The legal name, along with any assumed names or trade names, principal address, contact information, and social security number or taxpayer identification number of the applicant.
- (2) The applicant's form and place of organization, if applicable.
- (3) A certificate of good standing from the state in which the applicant was incorporated, if applicable.
- (4) A certificate of authority from the North Carolina Secretary of State to conduct business in this State, if required by the North Carolina Business Corporations Act, Chapter 55 of the General Statutes, or other evidence of applicant's registration or qualification to do business in this State.
- (5) A copy of the applicant's active money service business registration with the United States Department of Treasury Financial Crimes Enforcement Network.
- (6) A detailed description of the organizational structure of the applicant, including the identity of parents or subsidiaries of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange.
- (7) A detailed business plan, including a description of the activities conducted by the applicant, including a history of any existing operations and a description of the money transmission activities in which the applicant seeks to be engaged in the State.
- (8) A copy of the applicant's policies and procedures, including the anti-money laundering compliance program.
- (9) A detailed description of the applicant's internal business controls, including controls specific to information technology and data integrity.

- (10) The history of the material civil litigation and a record of any criminal convictions for the applicant, controlling person, and key management personnel for a 10-year period prior to the date of the application, including authorization to perform a federal and State criminal background check.
- (11) The name, business and residence address, and employment history for the past five years for any controlling person and key management personnel.
- (12) A sample payment instrument, if applicable, which bears the name and address or telephone number of the issuer clearly printed on the payment instrument.
- (13) If the applicant seeks to engage in money transmission in this State through authorized delegates:
  - a. A list identifying the proposed authorized delegates, including the name, mailing address, and other contact information of a representative of the authorized delegate and associated branch locations;
  - b. A sample authorized delegate contract.
- (14) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.
- (15) A copy of the applicant's most recent audited financial statement, including the balance sheet, statement of income or loss, statement of changes in shareholder equity, if applicable, and statement of changes in financial position and the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision.
- (16) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(b) Upon request by the Commissioner or the Commissioner's designee, the applicant shall furnish any additional information necessary to enable the Commissioner to evaluate the application as required by G.S. 53-208.50.

(c) The Commissioner is authorized, for good cause shown, to waive any requirements of this section with respect to any application or to permit any applicant to submit equivalent information in lieu of the information required by this section. (2016-81, s. 1.)

**§ 53-208.46. Minimum net worth.**

(a) An applicant shall possess and a licensee shall maintain at all times a net worth of not less than two hundred fifty thousand dollars (\$250,000) calculated in accordance with generally accepted accounting principles.

(b) The Commissioner may by order increase the amount of net worth required of an applicant or licensee if the Commissioner determines additional net worth is necessary to ensure safe and sound operation based on consideration of the following factors:

- (1) The nature and volume of the projected or established business.
- (2) The number of locations at or through which money transmission is or will be conducted.
- (3) The amount, nature, quality, and liquidity of assets.
- (4) The amount and nature of liabilities.
- (5) The history of operations and prospects for earning and retaining income.
- (6) The quality of operations and management.
- (7) The nature and quality of controlling persons.
- (8) The history of compliance with applicable State and federal law.
- (9) Any other factors the Commissioner deems relevant. (2016-81, s. 1.)

**§ 53-208.47. Surety bond.**

(a) Applicants shall be required to post a surety bond with the Commissioner at application and licensees shall maintain a surety bond in the amount of one hundred fifty thousand dollars (\$150,000) to be subsequently adjusted as set forth in subsection (b) of this section.

(b) The surety bond amount required subsequent to initial licensure shall consist of a base amount of one hundred fifty thousand dollars (\$150,000) for money transmission volumes in this State of no more than one million dollars (\$1,000,000). However, if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of one million dollars (\$1,000,000) but less than five million dollars (\$5,000,000), then the licensee's bond amount shall be one hundred seventy five thousand dollars (\$175,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of five million dollars (\$5,000,000) but less than ten million dollars (\$10,000,000), then the licensee's bond amount shall be two hundred thousand dollars (\$200,000); if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of ten million dollars (\$10,000,000) but less than fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred twenty-five thousand dollars (\$225,000); and if a licensee has transmission volume in North Carolina in a 12-month period ending December 31 in excess of fifty million dollars (\$50,000,000), then the licensee's bond amount shall be two hundred fifty thousand dollars (\$250,000).

(c) Any increased surety bond required under subsection (b) [of this section] shall be filed with the Commissioner on or before May 31 annually. Failure to obtain the additional surety bond required is grounds for summary suspension pursuant to G.S. 53-208.57(d)(2).

(d) The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money or monetary value in connection with the sale and issuance of payment instruments, stored value, or transmission of money. The Commissioner has the discretion to require the applicant [to] obtain additional insurance coverage to address related cybersecurity risks inherent

in the applicant's business model as it relates to virtual currency transmission and to the extent such risks are not within the scope of the required surety bond.

(e) The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring suit directly on the security bond, or the Commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

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

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

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

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

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

(i) The surety bond proceeds and any cash or other collateral posted as security by a licensee shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments, stored value obligations, and money transmissions and to the State in the event of the bankruptcy of the licensee. (2016-81, s. 1.)

#### **§ 53-208.48. Permissible investments and statutory trust.**

(a) Each licensee under this Article shall possess at all times unencumbered permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding transmission obligations. This requirement may be waived by the Commissioner if the dollar volume of a licensee's outstanding transmission obligations does not exceed the bond or other security devices posted by the licensee pursuant to G.S. 53-208.47.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of



the licensee's outstanding payment instruments and stored value obligations in the event of the bankruptcy of the licensee. (2016-81, s. 1.)

**§ 53-208.49. Application fees and annual assessment.**

(a) Application Fees. – Each application for initial licensure shall be accompanied by a nonrefundable filing fee of one thousand five hundred dollars (\$1,500).

(b) Annual Assessment. – For the purpose of meeting the cost of regulation under this Article, each licensee shall pay to the Commissioner an annual assessment as provided in this subsection. The annual assessment shall consist of a base amount of five thousand dollars (\$5,000) for volumes of no more than one million dollars (\$1,000,000) plus an additional sum, calculated on the transmission dollar volume reported by the licensee pursuant to G.S. 53-208.53 for the previous calendar year. The cumulative assessment shall be calculated as follows:

Transmission in U.S. Dollar Volume	Per U.S. Dollar
\$1,000,001 to \$5,000,000	\$0.0008
\$5,000,001 to \$10,000,000	\$0.0006
\$10,000,001 to \$50,000,000	\$0.00004
More Than \$50,000,000.00	\$0.0000006

The Commissioner may collect the assessment provided for in this subsection annually or in periodic installments as approved by the State Banking Commission. (2016-81, s. 1.)

**§ 53-208.50. Issuance of license.**

(a) Upon receipt of a complete license application, as set forth under G.S. 53-208.45, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, the character and general fitness of the applicant, and any other matters deemed relevant by the Commissioner. The Commissioner may require additional information and may require the amendment of the application in the course of the investigation. An applicant's failure to furnish all required information within 30 days after filing the application or within 30 days of a request by the Commissioner for additional information may be considered an abandonment of the application. In the course of the investigation, the Commissioner may conduct an on-site examination of the applicant, the reasonable cost of which shall be borne by the applicant.

(b) The Commissioner may only approve an application for licensure when the Commissioner has determined that all of the following requirements have been satisfied or are reasonably likely to be satisfied within a reasonable time period as specified by the Commissioner in the order of approval:

- (1) The applicant has satisfied the requirements imposed by this Article;
- (2) The applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
- (3) The applicant has demonstrated net worth necessary to satisfy the requirements in accordance with G.S. 53-208.46;
- (4) The applicant has obtained a surety bond in conformance with G.S. 53-208.47;
- (5) That neither the applicant nor any controlling person are identified on the Specially Designated Nationals and Blocked Persons List prepared by the United States Department of the Treasury or the United States Department of State subject to Presidential Executive Order No. 13224, Blocking Property

and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism;

- (6) The controlling persons and key management personnel, as a group, have degrees of character, competence, and experience which command the confidence and trust of the community and justify the belief that the applicant will operate safely, soundly, and in compliance with the law;
- (7) The anticipated volume and nature of business projected in the application are reasonable and indicate a reasonable likelihood of safe and sound operation.

(c) Licenses issued under this Article are perpetual and not assignable. Control of a licensee shall not be acquired through a stock purchase, merger, or other device without prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension as set forth under G.S. 53-208.56 are applicable to the acquiring person. (2016-81, s. 1.)

#### **§ 53-208.51. Prohibited practices.**

No person required to be licensed under this Article shall:

- (1) Fail to remit all money or monetary value received for transmission pursuant to G.S. 53-208.42(13)b., or give instructions committing equivalent money or monetary value to the person designated by the sender within 10 days after receipt by the licensee unless otherwise directed by the sender;
- (2) Fail to immediately notify the Commissioner in writing if the licensee dishonors or fails to satisfy any money transmission transaction within the 10 days following receipt for any reason other than direction by the sender;
- (3) Engage in the business of money transmission in the State under any name other than that [under] which it is organized or otherwise authorized to do business in the State;
- (4) Fail to comply with the Federal Bank Secrecy Act, 31 U.S.C. [§] 5311 et seq., and 31 C.F.R. Part 1022, including maintenance of active registration with the United States Department of Treasury Financial Crimes Enforcement Network;
- (5) Fail to comply with the Federal Electronic Funds Transfer Act, 12 U.S.C. [§] 1693 et seq., and Regulation E, 12 C.F.R. [§] 1005 et seq.;
- (6) Fail to safeguard identifying information obtained in the course of money transmission and otherwise comply with the requirements set forth under G.S. 75-60 et seq.;
- (7) Fail to comply with applicable State and federal laws and regulations related to the business of money transmission;
- (8) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation; or
- (9) Engage in unfair, deceptive, or fraudulent practices. (2016-81, s. 1.)

#### **§ 53-208.52. Maintenance of records.**

(a) Each licensee shall maintain such books, accounts, and other records as the Commissioner may require for a period of no less than three years unless the Commissioner, by

rule, prescribes otherwise for particular types of records. Such records shall be segregated from any other business in which the licensee is engaged and, at a minimum, include:

- (1) A record or records of each payment instrument sold.
- (2) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly.
- (3) Settlement sheets received from authorized delegates.
- (4) Bank statements and bank reconciliation records.
- (5) Records of outstanding transmissions, payment instruments, and stored value.
- (6) Records of each payment instrument paid within the three-year period.
- (7) A list of the names and addresses of all of the licensee's proposed authorized delegates, if any, and a copy of each written agreement in conformance with G.S. 53-208.44(c)(1).

(b) Maintenance of the documents required by this section in the form of any digital or electronic medium shall constitute compliance with this section provided records remain readily convertible into legible, tangible documents and shall be treated as originals for the purposes of any examination or investigation conducted pursuant to this Article.

(c) All records required to be maintained shall be secured against unauthorized access and damage and may be maintained at a location outside this State so long as they are made accessible to the Commissioner on seven days' written notice.

(d) All records required to be maintained under this Article shall be prepared in accordance with generally accepted accounting principles, where applicable.

(e) A licensee shall notify the Commissioner of any change in the location of its records within 10 days following such change. (2016-81, s. 1.)

### **§ 53-208.53. Reporting.**

(a) Annual Report. – No later than 90 days after the end of the calendar year, licensees shall file an annual report in a form prescribed by the Commissioner through NMLS, which shall include:

- (1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, if applicable, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited financial statement;
- (2) The total amount of outstanding transmission obligations;
- (3) Any material changes to any of the information submitted by the licensee on its original application, which have not been previously reported to the Commissioner on any other report required to be filed under this Article;
- (4) Copies of bank statements and other documentation necessary to document the existence and quality of the licensee's permissible investments; and
- (5) A list of the branch offices at which business regulated by this Article is being conducted by either the licensee or its authorized delegates.

(b) Quarterly Reports. – No later than 60 days after the calendar quarter has ended, licensees shall file a quarterly call report in a form prescribed by the Commissioner through NMLS, which shall at a minimum include:

- (1) The number and dollar volume of money transmission transactions in the State by activity type; and
  - (2) The total amount of outstanding transmission obligations.
- (c) Other Reports of Condition. – A licensee shall submit to the Commissioner through the NMLS reports of condition and any other reports requested by the Commissioner in order to carry out the purposes of this Article.
- (d) [Timely reporting.] – Failure to timely submit any reports required under this section is grounds for summary suspension pursuant to G.S. 53-208.57(d)(2). (2016-81, s. 1.)

**§ 53-208.54. Notice of Material Event.**

(a) Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the Commissioner through NMLS in writing and in a form prescribed by the Commissioner. The notice shall be accompanied by any information, data, and records required by the Commissioner.

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

- (1) The filing for bankruptcy or reorganization by the licensee.
- (2) The institution of revocation or suspension proceedings against the licensee by any State or governmental authority with regard to the licensee's money transmission activities.
- (3) Any felony indictment of the licensee or any controlling person or key management personnel related to money transmission activities.
- (4) Any felony conviction of the licensee or any controlling person or key management personnel related to money transmission activities.

(c) If the information contained in any document filed with the Commissioner or the NMLS is or becomes inaccurate or incomplete in any material respect, the licensee or applicant shall within 30 days file a correcting amendment to the information contained in the document. (2016-81, s. 1.)

**§ 53-208.55. Examination and investigation authority.**

(a) For purposes of initial licensure, suspension, conditioning, revocation, or termination, or general or specific inquiry, investigation, or examination to determine compliance with this Article, the Commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence including:

- (1) Criminal, civil, and administrative history information;
- (2) Personal history and experience information;
- (3) Any other documents, information, or evidence the Commissioner deems relevant to the inquiry, investigation, or examination regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article in order to carry out the purposes of this Article. The Commissioner may interview the controlling persons, employees, independent contractors, delegates, third-party vendors, and customers of the licensee concerning the

licensee's business. The Commissioner may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. Any investigation or examination that, in the opinion of the Commissioner, requires extraordinary review, investigation, or special examination shall be subject to the actual costs of the additional expenses and the hourly rate for the staff's time, to be determined annually by the State Banking Commission.

(c) Each person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee or person. No person subject to examination or investigation under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, or other information retained in any format. Each person subject to this Article shall also make available for interview by the Commissioner the controlling persons, employees, independent contractors, delegates, and third-party vendors of the person concerning money transmission subject to this Article.

(d) Each person subject to this Article shall make or compile such reports or prepare other information as may be directed or requested by the Commissioner in order to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this Article, the Commissioner may control access to any documents and records of the person under examination or investigation. The Commissioner may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records have been or are at risk of destruction, the person shall retain access as necessary to conduct its ordinary business.

(f) In order to carry out the purposes of this section, the Commissioner may:

- (1) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and records and related information obtained under this section;
  - (2) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this Article;
  - (3) Accept and rely on examination or investigation reports made by other government officials, within or without this State;
  - (4) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for any person subject to this Article and may incorporate the audit report in the report of examination or investigation.
- (2016-81, s. 1.)

#### **§ 53-208.56. Licensure authority.**

The Commissioner may by order, deny, suspend, revoke, or refuse to issue a license under this Article, or may restrict or limit the manner in which a licensee or applicant engages in the business of money transmission, if the Commissioner finds both of the following:

- (1) That the order is in the public interest; and
- (2) Any of the following circumstances apply:

- a. Any fact or condition exists that, if it had existed at the time of application, would have been grounds for denial;
- b. The licensee or applicant has filed any application, report, or other document with the Commissioner containing statements that, in light of the circumstances in which they were made, were false or misleading with respect to a material fact;
- c. The licensee or applicant fails at any time to meet the requirements of G.S. 53-208.46, 53-208.47, or 53-208.48;
- d. A controlling person or key management personnel of the licensee or applicant has been convicted of:
  - 1. A misdemeanor in the last 10 years involving fraud, money laundering, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses or involving any financial service or financial service-related business; or
  - 2. Any felony in the last seven years.
- e. The licensee or applicant has violated or failed to comply with any provision of this Article, rule issued pursuant to this Article, or order of the Commissioner;
- f. The licensee has conducted its business in an unsafe or unsound manner;
- g. The licensee or applicant is insolvent, 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;
- h. The licensee fails to respond to and cooperate fully with notices from the Commissioner or the Commissioner's designee related to the scheduling and conducting of an examination or investigation pursuant to § 53-208.55;
- i. The licensee or applicant fails to respond to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed, which allege or involve violation of this Article;
- j. The licensee fails to make any report required by this Article;
- k. The licensee or applicant is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the money transmission business; or
- l. The licensee or applicant is the subject of an order entered within the past five years by the authority of any state or federal agency with jurisdiction over the business of money transmission. (2016-81, s. 1.)

**§ 53-208.57. Disciplinary authority.**

(a) Unless otherwise provided, all administrative actions and hearings conducted pursuant to this Article shall proceed in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Upon issuance of any summary order permitted under this Article the Commissioner shall promptly notify the person subject to the order that the order has been entered and the reasons for the order. Within 20 days of receiving notice of the order, the person subject to the order may request in writing a hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall calendar a hearing within 15 days. If a licensee does not request a hearing, the order will remain in effect unless it is modified or vacated by the Commissioner.

(c) The Commissioner may by order:

- (1) Impose a civil money penalty upon any person required to be licensed under this Article for any violation of or failure to comply with this Article or any order of the Commissioner in an amount specified by the Commissioner, not to exceed five thousand dollars (\$5,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues. Each violation of or failure to comply with this Article shall be a separate and distinct violation. All civil money penalties collected under this Article shall be paid to the county school fund.
- (2) Require that any person required to be licensed under this Article to disgorge and pay to the sender any amounts that were not remitted or refunded in violation of G.S. 53-208.51(1).

(d) In addition to the summary suspension procedures authorized by G.S. 150B-3(c), if the Commissioner has reason to believe that a licensee or person subject to this Article may have violated or failed to comply with any provision of this Article and has reason to believe that such violation or failure to comply presents an imminent threat to the public, the Commissioner may:

- (1) Summarily order the licensee or person subject to this Article to cease and desist from any harmful activities or violations of this Article;
- (2) Summarily suspend the license of a licensee under this Article.

(e) When a licensee is subject to disciplinary action under this Article, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this Article during any period specified by the Commissioner.

(f) 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 Commission, the Commission may apply to 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.

(g) The requirements of this Article apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever, including structuring a transaction in a manner to avoid classification of the transaction as money transmission.

(h) The Commissioner, in the exercise of 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 [pursuant] to this Article. (2016-81, s. 1.)

#### **§ 53-208.58. 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 1 misdemeanor.

(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 1 misdemeanor. (2016-81, s. 1.)

**§ 53-208.59. Confidentiality.**

(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 subject to confidential treatment as set forth under G.S. 53C-2-7.

(b) The Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies or associations representing governmental agencies and may share otherwise confidential information pursuant to these written agreements, but only to the extent permitted by G.S. 53C-2-7(d). Information shared pursuant to the agreements authorized under this section shall retain any and all applicable privilege and related confidentiality protections provided by State or federal law.

(c) 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 licensees. (2016-81, s. 1.)

**§ 53-208.60. Rules.**

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

(b) Pursuant to G.S. 53C-2-6(b), any person aggrieved by any rule or order of the Commissioner under this Act may appeal to the State Banking Commission for review upon providing notice in writing within 20 days after the act complained of is adopted, issued, or done. Notwithstanding any other provision of law, any aggrieved party to a decision of the State Banking Commission shall be entitled to petition for judicial review pursuant to G.S. 53C-2-6(b). (2016-81, s. 1.)

**§ 53-208.61. Service of process.**

(a) Any person subject to this Article is deemed to have:

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

(b) For the purposes of this Article, the Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a person subject to this Article, postage prepaid and addressed to the last known address on file with the Commissioner. (2016-81, s. 1.)



**§ 53-208.62. Commissioner's participation in nationwide registry.**

(a) The Commissioner may require all persons subject to this Article to be licensed through the NMLS, and upon issuing such requirement, the Commissioner shall establish a reasonable transition period. In order to carry out these requirements, the Commissioner is authorized to participate in the NMLS.

(b) The Commissioner is authorized to establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other person subject to this Article.

(c) For the purpose of participating in the NMLS, the Commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements as reasonably necessary to participate in the NMLS. (2016-81, s. 1.)

**§ 53-208.63. Severability.**

Should any provision, sentence, clause, section, or part of this Article for any reason be held unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Article. (2016-81, s. 1.)

**§ 53-208.64. Transition.**

Any person who holds in good standing a money transmitters license issued by the Commissioner on or after November 1, 2014, may continue to engage in such business subject to the requirements of this Article. (2016-81, s. 1.)