

ASSEMBLY, No. 2859

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 10, 2012

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Revises "New Jersey Money Transmitters Act"; provides consumer protections; increases reporting and record keeping requirements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning money transmitters and amending P.L.1998,
2 c.14.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.1998, c.14 (C.17:15C-2) is amended to read
8 as follows:

9 2. As used in this act:

10 "Applicant" means a person filing an application for a license
11 under this act.

12 "Authorized delegate" means an entity authorized by the licensee
13 pursuant to the provisions of section 17 of this act to sell or issue
14 payment instruments or engage in the business of transmitting
15 money on behalf of a licensee.

16 "Commissioner" means the Commissioner of Banking and
17 Insurance.

18 "Control" means ownership of, or the power to vote, 25 percent
19 or more of the outstanding voting securities of a licensee or
20 controlling person. For purposes of determining the percentage of a
21 licensee controlled by any person, there shall be aggregated with
22 the person's interest the interest of any other person controlled by
23 that person or by any spouse, parent, or child of that person.

24 "Controlling person" means any person in control of a licensee.

25 "Department" means the Department of Banking and Insurance.

26 "Executive officer" means the licensee's president, chairman of
27 the executive committee, senior officer responsible for the
28 licensee's business in this State, chief financial officer and any other
29 person who performs similar functions.

30 "Foreign money transmitter" means a person who engages, in
31 this State, only in the business of the receipt of money for
32 transmission or transmitting money to locations outside of the
33 United States by any and all means, including but not limited to
34 payment instrument, wire, facsimile, electronic transfer, or
35 otherwise for a fee, commission or other benefit.

36 "Key shareholder" means any person, or group of persons acting
37 in concert, who is the owner of 25 percent or more of any voting
38 class of an applicant's stock.

39 "Licensee" means a person licensed under this act.

40 "Location" means a place of business at which activities
41 regulated by this act occur.

42 "Material litigation" means any litigation that, according to
43 generally accepted accounting principles, is deemed significant to
44 any applicant's or licensee's financial health and would be required
45 to be referenced in that entity's annual audited financial statements,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 report to shareholders or similar documents.

2 "Money" means a medium of exchange authorized or adopted by
3 the United States or a foreign government as a part of its currency
4 and that is customarily used and accepted as a medium of exchange
5 in the country of issuance.

6 "Money transmitter" means a person who engages in this State in
7 the business of:

8 (1) the sale or issuance of payment instruments for a fee,
9 commission or other benefit;

10 (2) the receipt of money for transmission or transmitting money
11 within the United States or to locations abroad by any and all
12 means, including but not limited to payment instrument, wire,
13 facsimile, electronic transfer, or otherwise for a fee, commission or
14 other benefit; or

15 (3) the receipt of money for obligors for the purpose of paying
16 obligors' bills, invoices or accounts for a fee, commission or other
17 benefit paid by the obligor.

18 "Outstanding payment instrument" means any payment
19 instrument issued by the licensee which has been sold in the United
20 States directly by the licensee or any payment instrument issued by
21 the licensee which has been sold by an authorized delegate of the
22 licensee in the United States, which has been reported to the
23 licensee as having been sold, and which has not yet been paid by or
24 for the licensee.

25 "Payment instrument" means any check, draft, money order,
26 travelers check or other instrument or written order for the
27 transmission or payment of money, sold or issued to one or more
28 persons, whether or not the instrument is negotiable. The term
29 "payment instrument" does not include any credit card voucher, any
30 letter of credit or any instrument which is redeemable by the issuer
31 in goods or services.

32 "Permissible investments" means:

33 (1) cash;

34 (2) certificates of deposit or other debt obligations of a bank,
35 savings bank, savings and loan association, or credit union, either
36 domestic or foreign;

37 (3) bills of exchange or time drafts drawn on and accepted by a
38 commercial bank, otherwise known as bankers' acceptances, which
39 are eligible for purchase by member banks of the Federal Reserve
40 System;

41 (4) any investment which is rated in one of the three highest
42 rating categories by a nationally recognized statistical rating
43 organization;

44 (5) investment securities that are obligations of the United
45 States, its agencies or instrumentalities, or obligations that are
46 guaranteed fully as to principal and interest by the United States, or
47 any obligations of any state, municipality or any political
48 subdivision thereof which is rated in one of the three highest rating

1 categories by a nationally recognized statistical rating organization;

2 (6) shares in a money market mutual fund, interest-bearing bills,
3 notes or bonds, debentures or stock traded on any national securities
4 exchange or on a national over-the-counter market, or mutual funds
5 primarily composed of those securities or a fund composed of one
6 or more permissible investments as set forth in this section;

7 (7) demand borrowing agreements made to a corporation or a
8 subsidiary of a corporation whose capital stock is listed on a
9 national exchange;

10 (8) receivables which are due to a licensee from its authorized
11 delegates pursuant to a contract described in section 17 of this act,
12 which are not past due or doubtful of collection; or

13 (9) any other investments or security device which the
14 commissioner may authorize by rule.

15 "Publicly traded corporation" means any corporation or other
16 legal entity, except a natural person, which:

17 (1) has one or more classes of security registered pursuant to
18 section 12 of the "Securities Exchange Act of 1934," Pub.L.73-291
19 (15 U.S.C. s.781);

20 (2) is an issuer subject to section 15(d) of the "Securities
21 Exchange Act of 1934," Pub.L.73-291 (15 U.S.C. s.78o(d)); or

22 (3) has one or more classes of securities traded in any open
23 market in any foreign jurisdiction or regulated pursuant to a statute
24 of any foreign jurisdiction which the commissioner determines to be
25 substantially similar to the statutes referred to in paragraphs (1) or
26 (2) herein.

27 (cf: P.L.1998, c.14, s.2)

28
29 2. Section 4 of P.L.1998, c.14 (C.17:15C-4) is amended to read
30 as follows:

31 4. a. No person, other than a person exempt from the
32 provisions of this act pursuant to section 3, shall engage in the
33 business of money transmission without a license as provided in
34 this act. A licensee shall prominently display its license in its
35 principal place of business.

36 b. A licensee may conduct its business in this State at one or
37 more locations, directly or indirectly owned, or through one or more
38 authorized delegates, or both, pursuant to the **single** license
39 granted to the licensee under this act.

40 (cf: P.L.1998, c.14, s.4)

41
42 3. Section 10 of P.L.1998, c.14 (C.17:15C-10) is amended to
43 read as follows:

44 10. a. Each licensee, shall make, keep and preserve the
45 following books, accounts and other records for a period of **three**
46 five years:

47 (1) a record of each **payment instrument** transmission sold,
48 including the date and the amount of the transaction;

1 (2) a general ledger containing all assets, liabilities, capital,
2 income and expense accounts (which general ledger shall be posted
3 at least monthly);

4 (3) settlement sheets received from authorized delegates;

5 (4) bank statements and bank reconciliation records;

6 (5) records of outstanding payment instruments;

7 (6) records of each payment instrument paid within the ~~three-~~
8 year five-year period;

9 (7) a list of names and addresses of all of the licensee's
10 authorized delegates;

11 (8) a list of all countries to which money is transmitted or from
12 which money is received for transmission;

13 (9) a list of the names and addresses of all clearing banks
14 through which the licensee's money transmission business is
15 conducted; and

16 (10) such other books and records as the commissioner may
17 require by regulation.

18 b. Maintenance of the documents required by this section in a
19 photographic, electronic or other similar form shall constitute
20 compliance with this section.

21 c. Each licensee shall maintain the records it is required to
22 maintain pursuant to ~~31 C.F.R. s.103.11 et seq.~~ 31 C.F.R.
23 s.1010.100 et seq.

24 d. The records of the licensee regarding business regulated
25 under this act shall be maintained at its principal place of business
26 or, with notice to the commissioner, at another location designated
27 by the licensee. If the records are maintained outside this State, the
28 commissioner may require that the licensee reimburse the
29 department for the travel costs incurred in the examination or
30 investigation of those records or may require that the licensee make
31 those records available to the commissioner at the commissioner's
32 office not more than seven business days after demand. The
33 commissioner may further require that those records be
34 accompanied by an individual who will be available to answer
35 questions regarding those records and the business regulated under
36 this act. The commissioner may require the appearance of a
37 specific individual, or request that the licensee designate an
38 individual with knowledge of the records and the business.

39 e. Each licensee is deemed to consent to inspection, by the
40 commissioner and any appropriate representative of any State or
41 federal law enforcement agency, of all records of the licensee
42 regarding business regulated under P.L.1998, c.14 (C.17:15C-1 et
43 seq.).

44 (cf: P.L.1998, c.14, s.10)

45
46 4. Section 12 of P.L.1998, c.14 (C.17:15C-12) is amended to
47 read as follows:

1 12. a. Each licensee shall file with the commissioner [an
2 annual] a report for the quarterly periods ending March 31, June 30,
3 September 30 and December 31 of each year, containing the
4 information required by the commissioner and within the time
5 period required by the commissioner by regulation , along with a
6 fee in an amount set by the commissioner by regulation not to
7 exceed \$200 per filing. In addition to this filing fee, the
8 commissioner may assess an additional fee by regulation in that
9 amount which the commissioner determines is necessary to meet the
10 costs to the department pursuant to this section.

11 b. The commissioner may require reports of any licensee or
12 authorized delegate, under penalty of perjury or otherwise,
13 concerning the licensee's or authorized delegate's business
14 conducted pursuant to the license issued under this act, as the
15 commissioner requires for the enforcement of this act.

16 c. A licensee who fails to file any report required by this
17 section on or before the day designated for making the report, or
18 fails to include any prescribed matter in the report, shall pay a
19 penalty of [not more than \$100] \$200 for each day that the report is
20 delayed or incomplete, unless the commissioner, for good cause
21 shown, reduces the amount to be paid, or unless the time to file the
22 report is extended in writing by the commissioner. [In addition, the
23 commissioner may revoke or suspend the authority of a licensee to
24 do business in this State.] The penalty may be collected in a
25 summary proceeding pursuant to the "Penalty Enforcement Law of
26 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue
27 in lieu of a summons.

28 d. [The] Each licensee shall file with the commissioner on or
29 before April 1 of each year an annual report and include in its
30 annual report:

31 (1) (a) except as provided pursuant to subparagraph (b) of this
32 paragraph (1), for a person licensed to engage only in the business
33 of a foreign money transmitter, a copy of its most recent audited
34 consolidated annual financial statement, including balance sheet,
35 statement of income or loss, statement of changes in shareholder's
36 equity and statement of changes in financial position, or, in the case
37 of a licensee that is a wholly owned subsidiary of another
38 corporation, the consolidated audited annual financial statement of
39 the parent corporation may be filed in lieu of the licensee's audited
40 annual financial statement;

41 (b) for a person licensed to engage only in the business of a
42 foreign money transmitter, a copy of its most recent compiled
43 annual financial statement, including balance sheet, statement of
44 income or loss, statement of changes in shareholder's equity and
45 statement of changes in financial position, except that the
46 commissioner may, for good cause, request a foreign money
47 transmitter to submit an audited financial statement;

1 (2) for the most recent quarter for which data is available prior
2 to the date of the filing of the annual report, but in no event more
3 than 120 days prior to the annual report filing date, the licensee
4 shall provide the number of payment instruments sold by the
5 licensee in the State, the dollar amount of those instruments and the
6 dollar amount of those instruments currently outstanding;

7 (3) any material changes to any of the information submitted by
8 the licensee on its original application which have not previously
9 been reported to the commissioner on any other report required to
10 be filed under this act;

11 (4) a list of the licensee's permissible investments;

12 (5) a list of the locations within this State at which business
13 regulated by this act is being conducted by either the licensee or its
14 authorized delegate; **[and]**

15 (6) **[such]** any other information as the commissioner may
16 require by regulation; and

17 (7) a copy of the licensee's most recent registration as a money
18 transmitter business with the Financial Crimes Enforcement
19 Network, established within the United States Department of the
20 Treasury, pursuant to 31 C.F.R. s.1010.100 et seq..

21 (cf: P.L.2007, c.81, s.17)

22

23 5. Section 16 of P.L.1998, c.14 (C.17:15C-16) is amended to
24 read as follows:

25 16. After notice and hearing pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the
27 commissioner may suspend or revoke a licensee's license if the
28 commissioner finds that:

29 a. The licensee has made a material misstatement or suppressed
30 or withheld information on the application for a license or any
31 document required to be filed with the commissioner, or the
32 licensee's authorized delegate has made a material misstatement or
33 suppressed or withheld information on the application for a license
34 or any document required to be filed with the commissioner, and the
35 licensee knew or should have known of the delegate's misstatement,
36 suppression or withholding of the information ;

37 b. Any fact or condition exists that, if it had existed at the time
38 when the licensee applied for its license, would have been grounds
39 for denying the application;

40 c. The licensee's net worth has become inadequate and the
41 licensee, after 10 days' written notice from the commissioner, fails
42 to take the steps the commissioner deems necessary to remedy the
43 deficiency;

44 d. The licensee knowingly violates any material provision of
45 this act or any rule or order validly promulgated by the
46 commissioner under authority of this act;

47 e. The licensee is conducting its business in an unsafe or
48 unsound manner;

1 f. The licensee is insolvent; for the purposes of this section, a
2 licensee shall be insolvent if: (1) the aggregate of its property at a
3 fair valuation, exclusive of any property which it may have
4 conveyed, transferred, concealed, removed or permitted to be
5 concealed or removed, with intent to defraud, hinder or delay its
6 creditors, is not sufficient in amount to pay its debts; or (2) the
7 licensee is unable, by its available assets or the honest use of credit,
8 to pay its debts as they become due;

9 g. The licensee has suspended payment of its obligations, has
10 made an assignment for the benefit of its creditors, or has admitted
11 in writing its inability to pay its debts as they become due;

12 h. The licensee has applied for an adjudication of bankruptcy,
13 reorganization, arrangement, or other relief under any bankruptcy;

14 i. The licensee refuses to permit the commissioner to make any
15 examination or investigation authorized by this act;

16 j. The licensee willfully fails to make any report required by
17 this act;

18 k. The licensee has willfully violated any provision of [31
19 C.F.R. s.103.11 et seq.] 31 C.F.R. s.1010.100 et seq.; [or]

20 l. The licensee has willfully violated any provision of
21 P.L.1994, c.121 (C.2C:21-23 et seq.) ; or

22 m. The licensee has been convicted of, or has entered a plea of
23 guilty or nolo contendere to a crime of the first, second, third or
24 fourth degree, without regard to whether adjudication was held.
25 (cf: P.L.1998, c.14, s.16)

26
27 6. Section 17 of P.L.1998, c.14 (C.17:15C-17) is amended to
28 read as follows:

29 17. a. Licensees desiring to conduct licensed activities through
30 authorized delegates shall authorize each delegate to operate
31 pursuant to an express written contract, which shall provide that the
32 licensee appoints the person as its delegate with authority to engage
33 in the activities of a money transmitter on behalf of the licensee.

34 b. The department shall collect and maintain the names and
35 addresses of each licensee and each authorized delegate of each
36 licensee. The department shall make that information available to
37 the public on the official website of the department and shall update
38 that information as it is received by the department. The
39 commissioner may assess a fee by regulation in that amount which
40 the commissioner determines is necessary to meet the costs to the
41 department pursuant to this section.

42 (cf: P.L.1998, c.14, s.17)

43
44 7. Section 18 of P.L.1998, c.14 (C.17:15C-18) is amended to
45 read as follows:

46 18. a. An authorized delegate shall not make any fraudulent or
47 false statement or misrepresentation to a licensee or to the
48 commissioner.

1 b. All money transmission or sale or issuance of payment
2 instrument activities conducted by authorized delegates shall be
3 strictly in accordance with the licensee's written procedures to the
4 authorized delegate.

5 c. An authorized delegate shall remit all money owing to the
6 licensee in accordance with the terms of the contract between the
7 licensee and the authorized delegate. The failure of an authorized
8 delegate to remit all money owing to a licensee within the time
9 presented shall result in liability of the authorized delegate to the
10 licensee for three times the licensee's actual damages. The
11 commissioner shall have the discretion to set, by regulation, the
12 maximum remittance time.

13 d. An authorized delegate is deemed to consent to [the
14 commissioner's] inspection by the commissioner and any
15 appropriate representative of any State or federal law enforcement
16 agency, with or without prior notice to the licensee or authorized
17 delegate, of the books and records of the authorized delegate of the
18 licensee whenever the commissioner has a reasonable basis to
19 believe that the licensee or authorized delegate is not in compliance
20 with this act.

21 e. An authorized delegate is under a duty to act only as
22 authorized under the contract with the licensee and an authorized
23 delegate who exceeds its authority is subject to cancellation of its
24 contract and further disciplinary action by the commissioner.

25 f. All funds (less fees) received by an authorized delegate of a
26 licensee from the sale or delivery of a payment instrument issued by
27 a licensee or received by an authorized delegate for transmission
28 shall, from the time the funds are received by an authorized
29 delegate until that time when the funds or an equivalent amount are
30 remitted by the authorized delegate to the licensee, constitute trust
31 funds owned by and belonging to the licensee. If an authorized
32 delegate commingles any trust funds with any other funds or
33 property owned or controlled by the authorized delegate, all
34 commingled proceeds and other property shall be impressed with a
35 trust in favor of the licensee in the amount equal to the amount of
36 the proceeds due the licensee. Nothing contained in this subsection
37 shall constitute authority for the creation of any trust funds, or a
38 trust to be impressed for funds, owned by or belonging to the
39 licensee, that have been deposited with a financial institution unless
40 the financial institution has actual knowledge that the funds are
41 owned by or belong to the licensee. The licensee shall be liable to a
42 purchaser or holder of an outstanding payment instrument, which is
43 issued by the licensee or received by the licensee's authorized
44 delegate for transmission and set-off by the financial institution. If
45 the licensee has insufficient assets to make the purchaser or holder
46 whole, the purchaser or holder shall be entitled to reimbursement
47 under the surety bond, irrevocable letter of credit or security device
48 possessed by the licensee pursuant to the provisions of sections 6

1 and 8 of P.L.1998, c.14 (C.17:15C-6 and 17:15C-8) to secure
2 faithful performance of the obligations of the licensee with respect
3 to the receipt, handling, transmission and payment of money in
4 connection with the sale and issuance of payment instruments or
5 transmission of money.

6 g. An authorized delegate shall report to the licensee the theft
7 or loss of payment instruments within 24 hours from the time it
8 knew or should have known of that theft or loss.

9 h. Authorized delegates shall comply with the provisions of
10 [31 C.F.R. s.103.11 et seq.] 31 C.F.R. s.1010.100 et seq. and
11 P.L.1994, c.121 (C.2C:21-23 et seq.).

12 i. Authorized delegates shall conduct all business governed by
13 this act in the name of the licensee.

14 j. An authorized delegate shall prominently display at each of
15 its locations a notice in a form prescribed by the commissioner,
16 indicating that the authorized delegate is an authorized delegate of a
17 licensee under P.L.1998, c.14 (C.17:15C-1 et seq.).

18 (cf: P.L.1998, c.14, s.18)

19
20 8. Section 24 of P.L.1998, c.14 (C.17:15C-24) is amended to
21 read as follows:

22 24. a. Any person who knowingly and willfully violates any
23 provision of this act for which a penalty is not specifically provided
24 is guilty of a crime of the fourth degree.

25 b. Any person who knowingly and willfully makes a material,
26 false statement in any document filed or required to be filed under
27 this act with the intent to deceive the recipient of the document is
28 guilty of a crime of the third degree.

29 c. Any person who knowingly and willfully engages in the
30 business of money transmission without a license as provided
31 herein shall be guilty of a crime of the **[third]** second degree.

32 d. Any person who purposely or knowingly refuses to permit
33 any lawful investigation by the commissioner or the Attorney
34 General shall be guilty of a crime of the third degree.

35 (cf: P.L.1998, c.14, s.24)

36
37 9. This act shall take effect on the 180th day following
38 enactment.

41 STATEMENT

42
43 This bill makes various revisions to the “New Jersey Money
44 Transmitters Act” to require licensed money transmitters and their
45 delegates to provide more reporting, record keeping and consumer
46 disclosures.

47 The bill requires licensees to prominently display license
48 information at their locations. The bill broadens the consent deemed

1 to be given by licensees and delegates to include record inspection
2 rights for appropriate law enforcement representatives in addition to
3 the Commissioner of Banking and Insurance, and requires licensees
4 to keep records for five years instead of the three years required by
5 the current act. The bill requires licensees to file quarterly reports
6 with the commissioner, in addition to the annual reports presently
7 required, and raises the penalty to \$200 per day, from not more than
8 \$100 per day, as to any licensee who fails to file any report. The
9 licensee shall also file annually with the commissioner, a copy of
10 the licensee's most recent registration with the Financial Crimes
11 Enforcement Network (FinCEN) as a money transmitter business
12 pursuant to 31 C.F.R. s.1010.100 et seq.

13 The bill expands the liability of licensees for certain acts of their
14 delegates and provides for license suspension upon conviction for
15 certain crimes. The bill also requires a delegate to prominently
16 display at each of its locations a notice indicating that the delegate
17 is an authorized delegate of a licensee. Further, the bill mandates
18 that the department maintain a website to make licensee and
19 delegate information available to the public. Finally, the bill
20 increases the crime of operating as a money transmitter without a
21 license from a crime of the third degree to a crime of the second
22 degree.

23 This bill provides that funds belonging to a licensee and
24 deposited in a financial institution shall not constitute trust funds,
25 unless the financial institution has actual knowledge that such funds
26 are owned by or belong to the licensee. The bill also provides that
27 the licensee is liable to a purchaser or holder of an outstanding
28 payment instrument which is issued by the licensee or received by
29 the licensee's authorized delegate for transmission and set-off by
30 the financial institution. If the licensee has insufficient assets to
31 make the purchaser or holder whole, the purchaser or holder will be
32 entitled to reimbursement under the surety bond that the act
33 currently requires all licensees to have.

34 The bill also makes technical corrections.