

ASSEMBLY, No. 4099

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 2, 2022

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

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,
46 report to shareholders or similar documents.

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

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

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

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

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

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

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

31 "Permissible investments" means:

32 (1) cash;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 to the licensee under this act.

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

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

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

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

(2) a general ledger containing all assets, liabilities, capital,

1 income and expense accounts (which general ledger shall be posted
2 at least monthly);

3 (3) settlement sheets received from authorized delegates;

4 (4) bank statements and bank reconciliation records;

5 (5) records of outstanding payment instruments;

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

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

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

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

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

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

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

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

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

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

44
45 4. Section 12 of P.L.1998, c.14 (C.17:15C-12) is amended to
46 read as follows:

47 12. a. Each licensee shall file with the commissioner ~~an~~
48 annual a report for the quarterly periods ending March 31, June 30,

1 September 30 and December 31 of each year, containing the
2 information required by the commissioner and within the time
3 period required by the commissioner by regulation , along with a
4 fee in an amount set by the commissioner by regulation not to
5 exceed \$200 per filing. In addition to this filing fee, the
6 commissioner may assess an additional fee by regulation in that
7 amount which the commissioner determines is necessary to meet the
8 costs to the department pursuant to this section.

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

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

26 d. **【The】** Each licensee shall file with the commissioner on or
27 before April 1 of each year an annual report and include in its
28 annual report:

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

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

46 (2) for the most recent quarter for which data is available prior
47 to the date of the filing of the annual report, but in no event more
48 than 120 days prior to the annual report filing date, the licensee

1 shall provide the number of payment instruments sold by the
2 licensee in the State, the dollar amount of those instruments and the
3 dollar amount of those instruments currently outstanding;

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

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

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

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

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

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

19
20 5. Section 16 of P.L.1998, c.14 (C.17:15C-16) is amended to
21 read as follows:

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

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

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

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

41 d. The licensee knowingly violates any material provision of
42 this act or any rule or order validly promulgated by the
43 commissioner under authority of this act;

44 e. The licensee is conducting its business in an unsafe or
45 unsound manner;

46 f. The licensee is insolvent; for the purposes of this section, a
47 licensee shall be insolvent if: (1) the aggregate of its property at a
48 fair valuation, exclusive of any property which it may have

1 conveyed, transferred, concealed, removed or permitted to be
2 concealed or removed, with intent to defraud, hinder or delay its
3 creditors, is not sufficient in amount to pay its debts; or (2) the
4 licensee is unable, by its available assets or the honest use of credit,
5 to pay its debts as they become due;

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

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

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

13 j. The licensee willfully fails to make any report required by
14 this act;

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

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

19 m. The licensee has been convicted of, or has entered a plea of
20 guilty or nolo contendere to a crime of the first, second, third or
21 fourth degree, without regard to whether adjudication was held.

22 (cf: P.L.1998, c.14, s.16)

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

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

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

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

40
41 7. Section 18 of P.L.1998, c.14 (C.17:15C-18) is amended to
42 read as follows:

43 18. a. An authorized delegate shall not make any fraudulent or
44 false statement or misrepresentation to a licensee or to the
45 commissioner.

46 b. All money transmission or sale or issuance of payment
47 instrument activities conducted by authorized delegates shall be
48 strictly in accordance with the licensee's written procedures to the

1 authorized delegate.

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

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

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

22 f. All funds (less fees) received by an authorized delegate of a
23 licensee from the sale or delivery of a payment instrument issued by
24 a licensee or received by an authorized delegate for transmission
25 shall, from the time the funds are received by an authorized
26 delegate until that time when the funds or an equivalent amount are
27 remitted by the authorized delegate to the licensee, constitute trust
28 funds owned by and belonging to the licensee. If an authorized
29 delegate commingles any trust funds with any other funds or
30 property owned or controlled by the authorized delegate, all
31 commingled proceeds and other property shall be impressed with a
32 trust in favor of the licensee in the amount equal to the amount of
33 the proceeds due the licensee. Nothing contained in this subsection
34 shall constitute authority for the creation of any trust funds, or a
35 trust to be impressed for funds, owned by or belonging to the
36 licensee, that have been deposited with a financial institution unless
37 the financial institution has actual knowledge that the funds are
38 owned by or belong to the licensee. The licensee shall be liable to a
39 purchaser or holder of an outstanding payment instrument, which is
40 issued by the licensee or received by the licensee's authorized
41 delegate for transmission and set-off by the financial institution. If
42 the licensee has insufficient assets to make the purchaser or holder
43 whole, the purchaser or holder shall be entitled to reimbursement
44 under the surety bond, irrevocable letter of credit or security device
45 possessed by the licensee pursuant to the provisions of sections 6
46 and 8 of P.L.1998, c.14 (C.17:15C-6 and 17:15C-8) to secure
47 faithful performance of the obligations of the licensee with respect
48 to the receipt, handling, transmission and payment of money in

1 connection with the sale and issuance of payment instruments or
2 transmission of money.

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

6 h. Authorized delegates shall comply with the provisions of
7 **[31 C.F.R. s.103.11 et seq.]** 31 C.F.R. s.1010.100 et seq. and
8 P.L.1994, c.121 (C.2C:21-23 et seq.).

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

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

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

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

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

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

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

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

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

33
34 9. This act shall take effect on the 180th day following
35 enactment.

38 STATEMENT

39
40 This bill makes various revisions to the "New Jersey Money
41 Transmitters Act" to require licensed money transmitters and their
42 delegates to provide more reporting, record keeping and consumer
43 disclosures.

44 The bill requires licensees to prominently display license
45 information at their locations. The bill broadens the consent deemed
46 to be given by licensees and delegates to include record inspection
47 rights for appropriate law enforcement representatives in addition to
48 the Commissioner of Banking and Insurance, and requires licensees

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

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

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

31 The bill also makes technical corrections.