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 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 754
 Finance

(Senator Rosapepe)

Economic Matters

Financial Institutions - Consumer Protection - Money Transmissions and Virtual Currencies

This bill expands the Maryland Money Transmission Act (MMTA) by, among other things, updating the definition of “money transmission” to clarify that certain forms of value (e.g., cryptocurrencies and prepaid access system cards) are items of monetary worth, subject to regulation under MMTA. The bill also incorporates applicable federal definitions by reference in order to align Maryland law with federal law. Moreover, the bill establishes new licensing and regulatory requirements related to currency exchanges.

Fiscal Summary

State Effect: Special fund revenues increase by a net of at least \$369,000 in FY 2021 as a result of the bill’s licensing fee changes and by at least \$77,000 annually thereafter. General fund revenues may increase negligibly to the extent any fines and penalties are assessed under the bill. Expenditures are not materially affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$369,000	\$77,000	\$77,000	\$77,000	\$77,000
Expenditure	0	0	0	0	0
Net Effect	\$369,000	\$77,000	\$77,000	\$77,000	\$77,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Maryland Money Transmission Act

The bill updates the reporting requirements for money transmitters and requires the use of the Nationwide Multistate Licensing System and Registry (NMLS). The bill also reduces the fee associated with the establishment of ancillary branches and money transmission kiosks from \$2,000 each to \$1,000 and \$500, respectively; the fee remains \$2,000 for each principal office.

The bill also addresses certain operational processes of licensees by setting forth deadlines for the remittance and/or deposit of funds by authorized delegates (*i.e.*, designated agents), altering penalties associated with failure to timely notify the Office of the Commissioner of Financial Regulation (OCFR) of certain notices, and requiring that licensees maintain record policies and procedures for the following programs:

- information security and operational security;
- business continuity;
- disaster recovery;
- anti-fraud;
- anti-money laundering; and
- preventing funding of terrorist activity.

Currency Exchanges

The bill establishes new requirements related to entities providing “currency exchange services” and requires such entities to be licensed by OCFR. “Currency exchange services” refers to:

- receipt of revenues from the exchange of currency of one government for currency of another government; or
- the assumed control of virtual currency from (or on behalf of) a person, at least momentarily, to sell, trade, or convert (1) virtual currency for currency, bank credit, or one or more forms of virtual currency or (2) currency or bank credit for one or more forms of virtual currency.

The bill exempts specified entities, such as banks, trust companies, savings and loans, and credit unions, from obtaining licensure as a currency exchange service and authorizes OCFR to adopt regulations related to currency exchanges. Licensing revenues (as well as

any other fee or revenue received by OCFR under the new Currency Exchanges Subtitle) must be deposited into the Nondepository Special Fund and used for related purposes. However, OCFR must pay all fines and penalties into the general fund.

Licensing and Recordkeeping Requirements: The bill prohibits a person from providing currency exchange services unless the person is properly licensed (or exempt from licensing). In addition, the bill establishes licensing procedures, requirements, and qualifications as well as provisions related to the confidentiality of information for licensees. An application for an initial license is \$1,000; applicants must also pay a \$1,000 investigation fee. A license may be renewed annually; the renewal fee is also \$1,000.

The bill establishes recordkeeping requirements for licensees; a licensee must retain the appropriate records for at least two years (unless a longer period is expressly required by State or federal law). At any time (and as often as considered appropriate), OCFR may investigate the records and business operations of a licensee (or a person who acts on behalf of a licensee).

The bill requires a licensee to comply with all federal and State laws concerning money laundering.

Disclosure Requirements: The bill requires a licensee to conspicuously post at each place of business at which the licensee provides currency exchange services a notice of the rate of exchange and fees for providing the services. If a licensee provides currency exchange services on the licensee's website, the website must conspicuously show the same information.

In addition, a licensee must provide each customer with a written receipt sufficient to identify:

- the transaction;
- the licensee;
- the exchange rate;
- the amount and type of currency (or virtual currency) exchanged; and
- the fees charged.

Required Reserves and Prohibited Activities: As part of a currency exchange service (including before or after the transmission), if a licensee has control of virtual currency for one or more customers, the licensee must maintain in its control an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the customers to the type of virtual currency.

A licensee is prohibited from providing currency exchange services to a customer unless the licensee is in full compliance with (1) federal anti-money-laundering laws, as specified and (2) federal customer due diligence requirements, as specified. In addition, the customer must present a form of customarily acceptable identification. The bill prohibits a licensee or person from engaging in specified unlawful activities during the conduct of virtual currency exchange services.

Enforcement: OCFR may enforce the bill's currency exchange requirements by issuing an order (1) to cease and desist and to take affirmative action from the violation and any further similar violations and (2) requiring the violator to take affirmative action to correct the violation (including restitution of money or property to any aggrieved person).

OCFR may suspend or revoke the license of any licensee who engages in illegal or otherwise dishonest activities or violates the provisions of the Currency Exchanges Subtitle, as specified. However, prior to taking any enforcement actions, OCFR must give the licensee an opportunity for a hearing in accordance with State law. OCFR must report to the appropriate State's Attorney (or the Attorney General) any alleged criminal violation. OCFR may also impose a civil penalty in an amount of up to (1) \$10,000 for a first offense and (2) \$25,000 for each subsequent offense.

A person who knowingly violates the provisions related to the licensure and regulation of currency exchanges is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$5,000 and/or imprisonment for up to three years.

A person who is injured by a violation of the bill's currency exchange requirements may file an action to recover damages or for injunctive relief. A court may award a prevailing plaintiff (1) up to three times the amount of actual damages and (2) an amount at least equal to the amount paid by the plaintiff to the defendant, reasonable attorney's fees, and costs.

The bill's currency exchange requirements may not be construed to affect the jurisdiction of the Securities Commissioner under Title 11 of the Corporations and Association Article.

Current Law/Background: The bill is, in part, a result of recommendations made in the [2018 final report of the Maryland Financial Consumer Protection Commission \(MFCPC\)](#). The report noted that, under MMTA, a person may not engage in the business of money transmission if that person (or the person with whom that person engages is in the business of money transmission) is located in the State, unless that person is licensed by OCFR. While it may be implicit, MMTA does not explicitly address the supervision of virtual currencies, the exchange of virtual currencies, or other new technologically advanced money service businesses. Further, based on a comparison of the [Uniform Model Act](#) with State law, the commission noted that there may be gaps in consumer protection provisions that are in the Uniform Model Act but not in State law.

OCFR considers virtual currencies to be covered by MMTA. However, to be proactive as the cryptocurrency markets continue to develop, MFCPC recommended that the General Assembly pass legislation that makes explicit what is implicit in the applicability of MMTA. Further, the commission recommended explicitly stating the licensing requirement for fiat currency and virtual currency exchanges. To further modernize State law, the commission recommended that the General Assembly consider adopting consumer protections that are included in the Uniform Model Act but not in State law.

Money Transmitters

OCFR regulates and licenses sellers of money orders and travelers' checks and those who receive money for transmission to others, known as money transmitters, operating in Maryland. First enacted in Maryland in 1959, the laws regulating money transmitters were updated in 2002 to more effectively regulate the industry. Under Title 12, Subtitle 4 of the Financial Institutions Article, money transmitter services include bill payer services, accelerated mortgage payment services, informal money transfer systems outside the conventional financial institutions system, and money transmissions conducted over the Internet.

To qualify for a money transmitter license, an applicant must meet specified requirements designed to protect consumers. In particular, the applicant must satisfy OCFR that the applicant (1) is of good moral character and has sufficient financial responsibility, business experience, and general fitness to engage in the business of money transmission and (2) has a certain net worth. An applicant must pay a \$2,000 annual licensing fee. New applicants must pay a \$1,000 investigation fee and meet certain bonding requirements. Since 2012, Maryland has used NMLS for licensing and renewal of money transmitters; the bill codifies this practice.

State Revenues: The net impact on Nondepository Special Fund revenues is an increase of at least \$369,000 in fiscal 2021 and at least \$77,000 annually thereafter.

Maryland Money Transmission Act Licensees

OCFR advises that the change in the licensing structure established by the bill is expected to affect special fund revenues. Under the bill, the licensing fee for an ancillary branch is \$1,000, while the licensing fee for a kiosk is \$500. Currently, \$2,000 is charged for any location. Of the current 199 licensed money transmitters in the State, 141 are primary organizational branches, 36 are ancillary branches, and 22 are confirmed to be automated kiosks. Under the bill, the ancillary branches and automated kiosks are subject to a \$1,000 and \$500 fee. Thus, assuming the number of licensees remains constant in future years and that the distribution of location types remains the same, Nondepository Special Fund revenues decrease by \$69,000 annually.

Currency Exchange Licensees

OCFR notes that there are 146 fiat currency exchange entities operating in Maryland that are registered with the federal government. The number of virtual (*i.e.*, online) currency exchanges providing services to Maryland residents is unknown, however. Accordingly, OCFR expects at least 146 licensees to register under the bill's currency exchange provisions. Licensees must register on the bill's effective date and renew again prior to December 31. Therefore, in fiscal 2021, Nondepository Special Fund licensing revenues increase by at least \$292,000, with additional revenues generated by an unknown number of virtual currency exchanges subject to licensing. Licensees are also required to pay a \$1,000 investigation fee, resulting in at least an additional \$146,000 in fiscal 2021 only.

In total, special fund revenues for the licensing of currency exchanges increase by at least \$438,000 in fiscal 2021 and by at least \$146,000 annually thereafter, assuming the number of renewals remains constant in future years.

Small Business Effect: To the extent that any small businesses engage in money transfer activities described in the bill, they may benefit from the reduced fees related to establishing ancillary branches and kiosks under MMTA. In addition, any small businesses that qualify as currency exchanges are required to comply with the bill's numerous licensing and regulatory requirements, which may result in increased costs for such businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Office of Administrative Hearings; Legislative Services; Department of Legislative Services

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