

**ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB616**

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**Hearing Date:** Tuesday February 05, 2013  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Schumacher  
**One Liner:** Adopt the Nebraska Money Transmitters Act and eliminate the Nebraska Sale of Checks and Funds Transmission Act and provide penalties

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File

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**Vote Results:**

**Aye:** 8 Senators Campbell, Carlson, Christensen, Crawford, Gloor, Howard, Pirsch, Schumacher

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Senator Paul Schumacher  
John Munn  
Ezra Levine

**Representing:**

Introducer  
NE Department of Banking and Finance  
The Money Services Round Table

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB616 (Schumacher), introduced at the request of the Department of Banking and Finance, would enact 48 new sections to be known as the Nebraska Money Transmitters Act and would outright repeal sections 8-1001 to 8-1019, the Nebraska Sale of Checks and Funds Transmission Act. The bill would provide, section by section, as follows:

Section 1 would provide that the name of the new act shall be the Nebraska Money Transmitters Act (NMTA).

Section 2 would provide that the definitions in sections 3 to 23 of the bill shall be used for purposes of the NMTA.

Section 3 would define "applicant" as a person filing an application for a money transmitter license.

Section 4 would define "authorized delegate" as an entity designated by a licensee or an exempt entity to engage in the business of money transmission on behalf of the licensee or exempt entity.

Section 5 would define "breach of security of the system" as an unauthorized acquisition of data that compromises the confidentiality of information that has been entered into the Nationwide Mortgage Licensing System and Registry (NMLSR). The term is necessary to facilitate the adoption of section 30, 31, 31, and 34 of the bill, which would allow the transition of the licensing process under this act to the NMLSR. This definition mirrors that in Nebraska's Residential Mortgage Licensing Act and the Nebraska Installment Loan Act, both of which require licensing and renewal through the NMLSR, and in the Nebraska Installment Sales Act, which is transitioning licensing to the system in 2013.

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Section 6 would define "control" as the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise, and would provide that certain persons will be deemed to have control of a licensee. This section is based on section 8-1001 of the existing Nebraska Sale of Checks and Funds Transmission Act (NSCA) which would be repealed if the NMTA is enacted.

Section 7 would define "controlling person" as any person in control of a licensee.

Section 8 would define "department" as the Department of Banking and Finance, which would administer the NMTA.

Section 9 would define "director" as the Director of Banking and Finance.

Section 10 would define "electronic instrument" as a card or other tangible object for the transmission or payment of money with the means for the storage of information. The card or object would have to be prefunded and reflect decreased value upon each use. Cards which are redeemable by an issuer for goods or services of the issuer would be excluded from the definition.

Section 11 would define "executive officer" as a licensee's president, chairman of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Section 12 would define "key shareholder" as any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock. This would comport with the definition of control in section 6 of the bill.

Section 13 would define "licensee" as a person licensed pursuant to the NMTA.

Section 14 would define "material litigation" as litigation that is significant to an applicant's or licensee's financial health and would be required to be referenced in annual audited financial statements, reports to shareholders, or similar documents, in accordance with generally accepted accounting principles.

Section 15 would define "monetary value" as a medium of exchange, whether or not redeemable in money.

Section 16 would define "money transmission" as a business for the sale or issuance of payment instruments or stored value; as the receiving of money or monetary value for transmission to another location by any means; and as certain bill payment services, except for those in which an agent of a payee receives money or value on behalf of the payee.

Section 17 would define "Nationwide Mortgage Licensing System and Registry" as the licensing system developed by the Conference of State Bank Supervisors (the association of banking regulators from the fifty states and the territories) and the American Association of Residential Mortgage Regulators. The term is necessary to facilitate the adoption of sections 30, 31, 32, and 34 of the bill, which would allow the transition of the licensing process under this act to the NMLSR. This definition mirrors that in Nebraska's Residential Mortgage Licensing Act, the Nebraska Installment Loan Act, and Nebraska Installment Sales Act.

Section 18 would define "outstanding payment instrument" as any payment instrument issued and sold by a licensee or issued by a licensee and sold by its authorized delegate, which is reported as having been sold, but not yet been paid by, or for, the licensee.

Section 19 would define "payment instrument" as any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, which has been sold or issued. Credit cards, vouchers, letters of credit, and any instrument redeemable by an issuer for goods or services would be excluded from the definition.

Section 20 would define "permissible investments" to include cash, certificates of deposit, bankers' acceptances, rated

investments, government securities, and the like, with authority for the Director of Banking and Finance to authorize other securities or investments as permissible. This definition would relate to section 28 of the bill.

Section 21 would define "person" to include an individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. The definition would exclude the United States and the State of Nebraska.

Section 22 would define "remit," for purposes of a licensee, as a direct payment of funds to the licensee or deposit of funds to a designated financial institution. The definition would exclude the reference to the Department of Banking and Finance remitting fees, costs, and fines contained in section 47 of the bill.

Section 23 would define "stored value" as monetary value that is evidenced by an electronic record.

Section 24 would provide that the licensing requirements of the NMTA do not apply to federal and state governments, political subdivisions, governmental agencies, the US Post Office, financial institutions and their subsidiaries, bank holding companies which have a bank subsidiary in Nebraska, authorized delegates of financial institutions, financial institution subsidiaries and holding companies that are also financial institutions, financial institution subsidiaries and holding companies, contractors providing governmental electronic benefits transfers; and operators of specified limited payment processing systems. Other authorized delegates would be excluded from the licensing requirements, but would have to comply with the provisions of the NMTA which apply to money transmission transactions.

Section 25 would set forth the licensing requirement for money transmitters who provide services to Nebraska residents, whether or not the money transmitter has a physical location in the state. These licenses would not be transferable or assignable. This section would also provide that money transmitters may conduct business through authorized delegates.

Section 26 would provide the requirements that must be met in order for the Department of Banking and Finance to grant a money transmitter license. The standards would include a net worth of fifty thousand dollars; proof that the business will be conducted honestly and fairly based on financial condition, financial and business experience, and the character and general fitness of the applicant. These standards would reflect current requirements set by section 8-1004 of the NSCA.

Section 27 would require applicants and licensees to obtain and maintain a surety bond in an amount based upon the number of locations at which it offers its services in Nebraska, up to a maximum amount of two hundred fifty thousand dollars. This section would allow for a pledge of securities to the Department of Banking and Finance in lieu of the surety bond requirement, and would provide authority to the department to require an increase to the bond amount for good cause. This section is a combination of the bonding requirements set forth in sections 8-1006 and 8-1008 of the NSCA.

Section 28 would require licensees to hold permissible investments having an aggregate market value at least equal to the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This section would also provide the Director of Banking and Finance with limited authority to waive the requirement, and would deem these investments to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event the licensee becomes bankrupt.

Section 29 would provide that applications for a license are to be on forms created by the Director of Banking and Finance, as is currently provided by section 8-1005 of the NSCA. Information required would include, but would not be limited to, the applicant's business activities, list of authorized delegates, corporate/organizational documents, employment history for executive officers and key shareholders, and financial information.

Section 30 would provide that, effective July 1, 2014, licensing of money transmitters will be through the NMLSR. The Department of Banking and Finance would give authority to establish requirements for licensing through the system by rule, regulation, or order. These requirements may include criminal history background checks through fingerprint or other data basis, except that executive officers or directors of publicly traded companies or their wholly-owned

subsidiaries would be excluded from fingerprinting; credit history; and information regarding authorized delegates. This section would provide for the payment of licensing fees through the NMLSR and would allow the system to collect a processing fee directly from an application. This section would require the Director of Banking and Finance to regularly report enforcement actions to the NMLSR adopts a privacy, data security, and breach of security notice policy. These requirements mirror language in Nebraska's Residential Mortgage Licensing Act, the Nebraska Installment Loan Act, and the Nebraska Installment Sales Act.

Section 31 would provide guidelines for confidentiality of information and supervisory information-sharing through the NMLSR. The requirements of this section mirror counterpart section in Nebraska's Residential Mortgage Licensing Act, the Nebraska Installment Loan Act, and the Nebraska Installment Sales Act.

Section 32 would provide for a non-refundable application fee of one thousand dollars, which is the same fee required currently for a license under section 8-1006 of the NSCA, and would cross-reference the NMLSR processing fee authorized in section 30 of the bill.

Section 33 would provide the Department of Banking and Finance with the responsibility of investigating license applications, would allow for onsite investigations of an applicant, and would reiterate the conditions for licensure found in sections 26 and 27 of the bill. This section would provide for a post-denial hearing in accordance with the Administrative Procedure Act.

Section 34 would establish the renewal requirements for a license, provide for transitional procedures for these licensees onto the NMLSR, including a change in the annual license renewal date from July 1 to December 31, and allow a renewal processing fee payable to the system. This section would require completion of a license renewal application, a fee of two hundred fifty dollars, bond information, and a list of locations where the business is conducted; all of these requirements are currently in place for licenses under section 8-1009 of the NSCA. This section would also require the filing of audited financial statements, a list of authorized delegates, and information on the licensee's investments, payment instruments sold in the state, and business changes.

Section 35 would provide that a licensee must (1) file notice with the Department of Banking and Finance within thirty calendar days of any material changes in information provided in a licensee's application, and (2) file a report within five business days of certain specified events. This section mirrors section 8-1019 of the NSCA.

Section 36 would provide for change of control procedures for licensees that mirror the change of control procedures set out in section 8-1018 of the NSCA.

Section 37 would provide authority for the Department of Banking and Finance to conduct annual onsite examinations of licensees upon reasonable written notice, and to conduct examinations of licensees and authorized delegates without prior notice if the Director of Banking and Finance has a reasonable basis to believe that the licensee is in noncompliance with the NMTA. The department would be authorized to conduct an examination with another state, and to accept another state's examination or a report from an independent accountant in lieu of an onsite examination. This section would require licensees to pay examination expenses.

Section 38 would provide record-keeping standards for licensees, and would include the requirement to maintain records for a period of five years, the authority for photographic or electronic record-keeping, and for storage of records outside of Nebraska.

Section 39 would set forth conditions that must be included in the written contract between a licensee and each of its authorized delegates, and would provide that neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Director of Banking and Finance.

Section 40 would set forth conduct standards for authorized delegates, including adherence to a licensee's written procedures and the handling and remission of money owed to the licensee. This section would provide authority to the Department of Banking and Finance to cancel an authorized delegate's contract and take other disciplinary action

against those entities.

Section 41 would continue the authority of the Department of Banking and Finance to suspend or revoke a license in accordance with the Administrative Procedure Act, as is currently provided in section 8-1012 of the NSCA. This section would provide additional events which the Director of Banking and Finance may consider as cause to institute these proceedings against a licensee, including unsafe and unsound practices, failure to pay its obligations, and refusal to permit an examination. This section would also contain provisions that mirror section 8-1012 regarding surrender, expiration, and cancellation of a license.

Section 42 would provide for the suspension or revocation of authorized delegates by the Department of Banking and Finance in accordance with the Administrative Procedure Act, if the entity violates the NMTA, does not cooperate with an examination or investigation, engages in fraud, other bad acts or unsafe or unsound practices, or is convicted of money laundering.

Section 43 would provide authority to the Department of Banking and Finance to issue cease and desist orders upon a determination that a violation of the NMTA has occurred. Subsections (1), (3), and (4) of this section are virtually identical to section 8-1016 (1), (2), and (3) of the current act. Subsection (2) of this section would provide authority to order a licensee to cease and desist its business with an authorized delegate who is subject to a departmental order issued under section 42 of the bill.

Section 44 would provide authority to the Department of Banking and Finance to impose administrative fines up to \$5,000.00 per violation for violations of the NMTA or departmental rules or orders. Fines and investigation costs could only be assessed after notice and hearing.

Section 45 would provide for criminal penalties for three categories of offenses. Subsection (1) would provide that violations of the act, rules, regulations, or orders would constitute Class III misdemeanors. Subsection (2) would provide that the intentional making of false statements, certifications, or entries in records required to be kept under the NMTA would constitute Class I misdemeanors. Subsection (3) would provide that the knowing engagement in unlicensed money transmission business would constitute a Class I misdemeanor.

Section 46 would provide authority to the Department of Banking and Finance to adopt and issue rules and regulations, orders, findings and demands under the NMTA.

Section 47 would provide that the fees, charges, and costs collected by the Department of Banking and Finance pursuant to the NMTA will be credited to the Financial Institution Assessment Cash Fund, while fines will be distributed per the Nebraska Constitution, Article VII, section 5. These are current procedures.

Section 48 would provide for savings and transitional provisions for entities currently licensed under the NSCA.

Section 49 would amend section 8-602, which is the general fees statute for financial institutions, to update the citation to the pledging of securities statute in section 27 of the bill. No new fee would be imposed by the amendment.

Section 50 would provide for a delayed operative date of January 1, 2014.

Sections 51 and 52 would contain the amendatory repeal provisions for the bill and would provide for the outright repeal of sections 8-1001 to 8-1019.

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Mike Gloor, Chairperson