**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1230**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Rose

Document Path: l:\s-res\mtr\011mone.rem.mtr.docx

Introduced in the Senate on February 16, 2012

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Money Services and Illicit Finance

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/16/2012 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\02-16-12.docx))

2/16/2012 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 3](file:///h:\sj%20archive\2012\02-16-12.docx))

**VERSIONS OF THIS BILL**

[2/16/2012](file:///p:\pprever\2011-12\1230_20120216.docx)

**A** **BILL**

TO AMEND TITLE 34 OF THE 1976 CODE, BY ADDING CHAPTER 42 TO ENACT THE “SOUTH CAROLINA MONEY SERVICES AND ILLICIT FINANCE ABATEMENT ACT” TO AUTHORIZE THE STATE BOARD OF FINANCIAL INSTITUTIONS TO PROMULGATE RULES TO REGULATE MONEY TRANSMISSION BUSINESSES AND THE TRANSMISSION OF THE PROCEEDS OF ILLEGAL ACTIVITIES, TO ESTABLISH THE LICENSURE AND FEE STRUCTURE OF MONEY TRANSMISSION BUSINESSES, TO CREATE THE MONEY TRANSMISSION DIVISION WITHIN THE STATE BOARD OF FINANCIAL INSTITUTIONS TO INSPECT AND INVESTIGATE POTENTIAL VIOLATIONS OF THIS CHAPTER, TO ESTABLISH A MONEY TRANSMISSION DATABASE TO MEMORIALIZE EACH MONEY TRANSMISSION TRANSACTION TO AID LAW ENFORCEMENT IN THE INVESTIGATION OF ILLEGAL MONEY LAUNDERING ACTIVITY, TO PROHIBIT THE TRANSMISSION OF THE PROCEEDS OF ILLEGAL ACTIVITIES AND ESTABLISH THE PENALTIES FOR VIOLATIONS; AND TO AMEND ARTICLE 25 OF CHAPTER 6, TITLE 12, RELATING TO TAXATION CREDITS, BY ADDING SECTION 12-6-3760 TO PROVIDE FOR AN INCOME TAX CREDIT FOR FEES PAID TO THE STATE FOR THE TRANSMISSION OF MONEY PURSUANT TO THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Money Services and Illicit Finance Abatement Act”.

SECTION 2. Title 34 of the 1976 Code is amended by adding:

“Chapter 42

Article 1

Licensing of Money Transmitters

Section 34‑42‑10. As used in this chapter the term:

(1) ‘Authorized Agent’ means an employee or agent of a licensee who acts under the authority of the licensee to provide money transmission services.

(2) ‘Board’ means the State Board of Financial Institutions.

(3) ‘Currency’ means United States notes, Federal Reserve notes, coin or paper money designated as legal tender whether from the United States or any country, precious metals and gems, commodities that may be bartered as value between parties, and foreign bank notes accepted as a medium of exchange.

(4) ‘Department Account’ means the Money Services Oversight Revolving Fund.

(5) ‘Division’ means the Money Transmission Division of the State Board of Financial Institutions.

(6) ‘Licensee’ means a person or entity licensed to engage in money transmission services pursuant to this chapter.

(7) ‘Money Transmission’ means the sale or issuance of exchange or engaging in the business of receiving money, currency, or monetary value for transmission or transmitting money, currency, or medium of currency exchange within the United States or to locations abroad by any and all means including but not limited to payment instruments, wire, facsimile, or electronic transfer.

(8) ‘Person’ means an individual, partnership, association, or corporation.

(9) ‘Principal’ means an owner, partner, director, executive officer, trustee, or manager.

(10) ‘Structuring’ means to conduct or make currency transmission transactions, in any amount, at one or more financial institutions, whether by one or more individuals on one or more days, for the purpose of evading currency transaction reporting requirements under state or federal law.

Section 34‑42‑20. (A) The State Board of Financial Institutions is authorized to promulgate regulations to carry out the purposes of this chapter, to provide for the protection of the public, to assist law enforcement with criminal investigations, and to assist licensees in interpreting and complying with this chapter.

(B) The board is authorized to create a Money Transmission Division within the agency to carry out the intent of this chapter and enforce the provisions of law and regulations set by the board.

(C) Investigators of the Money Transmission Division may:

(1) administer or cause to be administered oaths;

(2) issue, revoke, quash, or modify subpoenas duces tecum under the seal of the department or cause any such subpoena duces tecum to be issued by any county magistrate, municipal court judge, or circuit court judge to require persons to appear before the department at a reasonable time and place to be named and to bring such books, records, electronic files, or documents for inspection as may be designated;

(3) subpoena and compel the attendance of witnesses; and

(4) take evidence, take, or cause to be taken, testimony and depositions.

Section 34‑42‑30. The board may order and impose administrative penalties upon any person required to be licensed pursuant to this chapter for violations of this chapter or regulations promulgated under it. Administrative penalties shall not exceed one thousand dollars per day for each violation. Each transaction by a person required to obtain a license pursuant to this chapter is considered a separate violation.

Section 34‑42‑40. Any person having reason to believe that a provision of this chapter is being violated, has been violated, or is about to be violated, may file a complaint with Money Transmission Division setting forth the details of the alleged violation. An immunity from civil liability is granted to any person who furnishes such information, unless the information provided is false and the person providing the information does so with reckless disregard for the truth.

Section 34‑42‑50. The board, upon a determination that a violation of this chapter is willful, may refer a violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution.

Section 34‑42‑60. (A) It is unlawful for any person or other entity to engage in the business of money transmission, including advertising, soliciting, holding itself out as a money transmitter, without first obtaining a license from the State Board of Financial Institutions pursuant to this chapter. A person or other entity providing a money transmission service may not avoid the requirements of this chapter by providing a check, pre‑paid value card, or other currency equivalent instead of currency when cashing payment instruments.

(B) A person providing a money transmission service on the effective date of this chapter may continue to engage in the business without a license until the board has acted upon the application for a license, but the application must be filed within ninety days after the effective date of this chapter.

(C) Any person who violates a provision of this section commits a misdemeanor, punishable by up to five years in prison and up to a ten thousand dollar fine.

Section 34‑42‑70. This chapter shall not apply to:

(A) the United States or an agency or department of the United States government including the United States Postal Service;

(B) a state or an agency, department, or other instrumentality of a state or political subdivision;

(C) a bank, savings institution, credit union, farm credit system, or trust company organized under the laws of the United States or any state, whose deposits are federally insured;

(D) a person or corporation engaged in the business of armored car currency transportation;

(E) any other person or business or class of persons exempted by the board upon a finding that the licensing of the person or business is not necessary to achieve the purposes of this chapter.

Section 34‑42‑80. (A) An application for licensure pursuant to this chapter must be in writing, under oath, and on a form prescribed by the board. The application shall set forth all of the following:

(1) the name and address of the applicant;

(2) if the applicant is a firm or partnership, the name and address of each principal;

(3) if the applicant is a corporation, the name and address of each officer, director, registered agent, and principal;

(4) the addresses of the locations of the business to be licensed;

(5) the name and address of each authorized agent submitted to work under the authority of the licensee;

(6) a criminal background check of the applicant and any authorized agent, the cost of which is to be born by the applicant; and

(7) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location, of the applicant and its members, officers, directors, and principals as the board requires.

(B) The board may make such investigations as the board considers necessary to determine if the applicant has complied with all applicable provisions of this chapter and state and federal law.

(C) The application must be accompanied by the payment of a two hundred fifty dollar application fee and a five hundred dollar investigation fee for each branch location. These fees are not refundable or abatable, however, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part of it.

(D) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars plus a fifty dollar fee for each branch location certificate issued under a license.

(E) A license issued under this chapter may not be transferred or assigned.

Section 34‑42‑90. Upon the filing and investigation of an application, and compliance by the applicant with Section 34‑42‑80, and this section, the board shall issue and deliver to the applicant the license applied for to engage in business pursuant to this chapter at the locations specified in the application, provided that the board finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the board fails to make these findings, a license may not be issued, and the board shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

Section 34‑42‑100. (A) The board may suspend or revoke any license or licenses issued pursuant to this chapter if, the board issues written findings that the licensee or his agent has engaged in any of the following conduct:

(1) violated this chapter or applicable state or federal law or rules;

(2) is delinquent in taxes to the state or federal government;

(3) made a false statement on the application for a license pursuant to this chapter;

(4) refused to cooperate with an investigation by the board or law enforcement authorized pursuant to this chapter;

(5) failed to comply with an order of the board;

(6) demonstrated incompetency or untrustworthiness to engage in the business of money transmission; or

(7) been convicted of a felony or a misdemeanor involving fraud, misrepresentation, or deceit.

(B) The licensee may request a hearing of the suspension of the license in accordance with the Administrative Procedures Act.

Section 34‑42‑110. If the board determines that a person required to be licensed pursuant to this chapter has violated this chapter or regulations promulgated pursuant to this chapter, the board may order the person to cease and desist from the violations and to comply with this chapter. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as necessary pursuant to this chapter and may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with this chapter. The board may enforce compliance with an order issued pursuant to this chapter by the imposition and collection of civil penalties authorized pursuant to this chapter.

Section 34‑42‑120. (A) Any money transmission business or person engaged in the business of money transmission over wire, telephonic, internet, or other electronic means shall collect a fee of five dollars for each transaction valued in an amount up to five hundred dollars and for each transaction valued greater than five hundred dollars, a fee of ten dollars plus two percent of the amount in excess of five hundred dollars.

(B) The fee prescribed by subsection (A) of this section shall be remitted quarterly to the Department of Revenue with such forms and by such date as the commissioner prescribes.

(C) All revenues derived from the fee shall go to the Money Services Oversight Revolving Fund.

(D) All funds recovered under this section shall be used by the department in furtherance of its requirements under this chapter, except:

(1) twenty percent shall go toward funding efforts by the solicitors to investigate and prosecute organized crime and financial crimes in their jurisdictions, to include hiring of personnel and contractors, purchasing equipment, travel, or training;

(2) twenty percent shall go toward funding grants for local law enforcement activities related to combating organized crime and financial crimes, to include, but not limited to, the hiring of intelligence and investigative personnel and contractors, purchase of equipment, travel, or training;

(3) five percent shall go to the Attorney General for efforts to investigate and prosecute organized crime and financial crimes in their jurisdictions, to include hiring of personnel and contractors, purchasing equipment, travel, or training;

(4) forty percent shall go to the department to fund its operations and obligations under this chapter and to provide department personnel and resources to local law enforcement and the solicitors for training, information exchange, and general support in the investigation and prevention of the illicit use of money services businesses in their jurisdictions. Funds recovered under this section for the department may be expended at the discretion of the commissioner.

(E) The board shall review and approve applications from law enforcement and the solicitors for grant allocations. Twice a year the commissioner will host a planning meeting with the solicitors and law enforcement to identify funding priorities and develop a disbursement plan based on merit of request.

(F) Every licensee and their authorized agents shall post a notice on a form prescribed by the commissioner that notifies customers that upon filing an individual income tax return with either a valid social security number or a valid taxpayer identification number, the customer shall be entitled to an income tax credit equal to the amount of the fee paid by the customer for the transaction.

(G) The South Carolina Department of Revenue shall be afforded all provisions currently under law to enforce the provisions of this section. If a licensee fails to file reports or fails to remit the fee authorized by this section, the board shall have the authority pursuant to this chapter to suspend the license of the licensee and its authorized agents. The licensee or its agents may not reapply for a license until all required reports have been filed and all required fee amounts have been remitted.

Article 2

Investigations

Section 34‑42‑200. (A) The Money Transmission Division of the Board of Financial Institutions shall implement a common database with real‑time access through an internet connection for money transmission service providers, as provided in this subsection. The board shall enter into a contract with a single source private vendor to develop and operate the database. By no later than July 1, 2013, the database must be accessible to the board, law enforcement officials, and the money transmission service providers to meet the requirements of this chapter.

(B) For every transaction money transmission service providers must submit the person’s data to the database provider upon completion of the transaction in a format the board requires by regulation, including:

(1) the customer’s name, address, social security number, employment authorization alien number, passport number, driver’s license number, or identification card number including state or country of issuance;

(2) the method of payment;

(3) the name and address of the beneficiary or recipient;

(4) the name, address, and account number of the business or foreign affiliate where the money transmission was sent;

(5) the amount, date, time, and confirmation or identification number of the transaction;

(6) any additional information required by the board.

(C) The board may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section.

(D) A money transmission business may request permission from the board to opt out of the requirements of this section upon a showing that they provide their own database that meets all other requirements of this section including providing access to law enforcement personnel.

(E) Information in the database or in an alternative database authorized by the board must be maintained for at least three years.

(F) All requirements to submit transaction information to the database will not become enforceable until completion of the database and notice is sent to licensees.

Section 34‑42‑210. Each money transmission business shall:

(A) prepare and maintain a record of each financial transaction occurring in this State which involves a currency transmission for not less than three years from the date of the transaction. These records must be kept in a widely accepted electronic format as specified by the board;

(B) report to the board any transaction it suspects involves the proceeds of illegal activities;

(C) send a copy of any suspicious activity report related to the money transmissions sent to the federal government pursuant to the Bank Secrecy Act to the Money Transmission Division;

(D) report any material change to information reported to the board in the original license application, with fifteen days, including, but not limited to, changes in ownership interest, authorized agents, and business locations.

Section 34‑42‑220. (A) Each person required to be licensed pursuant to this chapter shall maintain in its offices such books, accounts, and records as the board reasonably may require. The books, accounts, and records must be maintained separate from any other business in which the person is engaged and must be retained for a period prescribed by the board but not less than three years.

(B) The board, its agent, the State Law Enforcement Division, or other law enforcement agency may examine the books, accounts, and records required to be maintained pursuant to this chapter.

Section 34‑42‑230. (A) The Attorney General, Circuit Solicitors, SLED, or local law enforcement are authorized to conduct investigations into violations of this chapter and are authorized to have access to, inspect, subpoena, or copy information in the money transmission database or records maintained by a money transmission business under the requirements of this chapter. These investigations may be initiated at the request of the board or by a law enforcement agency.

(B) If a person fails to comply with a subpoena issued or caused to be issued by the division or law enforcement pursuant to this chapter, the division may petition a court of competent jurisdiction for an order requiring the subpoenaed person to appear and testify and to produce such records specified in the subpoena duces tecum or to give evidence regarding the matter under investigation. The court shall conduct a hearing to determine if the person who failed to comply with the subpoena did so without legal cause and upon such finding, shall hold that person in contempt of court.

Section 34‑42‑240. Except as otherwise provided in this chapter or by department rule, all information concerning an investigation or examination conducted by the division or law enforcement pursuant to this chapter and all personal and financial information obtained by the board or division and any related record is confidential and not subject to disclosure.

Section 34‑42‑250. (A) It is unlawful for any money transmitter or authorized agent to:

(1) receive or possess itself of any property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or to concur or conspire in omitting to make any material entry thereof;

(2) embezzle, abstract, or misapply any money, property, or thing of value of the money transmitter or authorized vendor with intent to deceive or defraud such money transmitter or authorized vendor;

(3) make any false entry in any book, report, or statement of such money transmitter or authorized vendor with intent to deceive or defraud such money transmitter, authorized vendor, or another person, or with intent to deceive the office, any other state or federal regulatory agency, or any authorized representative appointed to examine or investigate the affairs of such money transmitter or authorized vendor;

(4) engage in an act that violates 18 U.S.C. s. 1956, 1957, 1960, or 31 U.S.C. 5324, or any other law, rule, or regulation of another state or of the United States relating to the business of money transmission or usury which may cause the denial or revocation of a money transmitter license or registration in such jurisdiction;

(5) deliver or disclose to the board or any of its employees any examination report, report of condition, report of income and dividends, audit, account, statement, or document known by it to be fraudulent or false as to any material matter; or

(6) structure or attempt to structure payments or transactions for the purpose of evading currency transaction reporting requirements of state or federal law.

(B) Any person who violates any provision of this section commits a felony, punishable by up to ten years in prison and up to a ten thousand dollar fine. Each transaction shall be considered a separate violation and the sentences shall run consecutively.

Section 34‑42‑260. (A) It is unlawful to:

(1) transmit or attempt to transmit money, currency, or any item of value which the holder knows or should know is the result of or the proceeds of unlawful activity;

(2) knowingly execute, or attempt to execute, a scheme or artifice to defraud a money transmitter or authorized vendor, or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a money transmitter or authorized vendor, by means of false or fraudulent pretenses, representations, or promises;

(3) place among the assets of such money transmitter or authorized vendor any note, obligation, or security that the money transmitter or authorized vendor does not own or that to the person’s knowledge is fraudulent or otherwise worthless, or for any such person to represent to the office that any note, obligation, or security carried as an asset of such money transmitter or authorized vendor is the property of the money transmitter or authorized vendor and is genuine if it is known to such person that such representation is false or that such note, obligation, or security is fraudulent or otherwise worthless;

(4) structure or attempt to structure payments or transactions for the purpose of evading currency transaction reporting requirements of state or federal law; or

(5) provide false information or present false identification to a money transmission business.

(B) Any person who violates any provision of this section commits a felony, punishable by up to ten years in prison and up to a twenty thousand dollar fine. Each transaction shall be considered a separate violation and the sentences shall run consecutively.

Section 34‑42‑270. All property of every kind used or intended for the use in the course of, derived from, or realized through a transaction which involves the proceeds of illegal activity and subject to the provisions of this chapter shall be subject to forfeiture to the State. Forfeiture shall be by the same procedure as set forth in Section 44‑53‑530.

Section 34‑42‑280. (A) Whenever it appears that a person has violated, or that reasonable cause exists to believe that a person is likely to violate, this chapter or a rule adopted pursuant to this chapter, the following persons may bring an action for injunctive relief to enjoin the violation or enforce compliance with the provision:

(1) the board or its designee, or an investigator with the Money Transmission Division;

(2) the Attorney General or his designee;

(3) the solicitor of the circuit in which the violation is alleged to have occurred.

(B) In addition to the authority granted to the division under this section, the division may bring an action for injunctive relief if the division has reason to believe that a person has violated or is likely to violate an order of the board issued pursuant to this chapter.

(C) On a proper showing, the court may issue a restraining order, an order freezing assets, a preliminary or permanent injunction, or a writ of mandate, or may appoint a receiver for the defendant or the defendant’s assets.

(D) A receiver appointed by the court under this section may, with approval of the court, exercise all of the powers of the defendant’s directors, departments, partners, trustees, or persons who exercise similar powers and perform similar duties.

(E) An action brought under this section may include a claim for ancillary relief, including a claim by the commissioner for costs or civil penalties authorized under this chapter, or for restitution or damages on behalf of the persons injured by the act constituting the subject matter of the action, and the court has jurisdiction to award that relief. Any proceeds awarded under this section shall be deposited in the department account for expenditure in furtherance of this chapter.

(F) In addition to, or in lieu of, the enforcement of a temporary restraining order, temporary injunction, or permanent injunction against the person, the court may, upon application of the department, impound and appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, any related books, records, documents, or papers. The receiver or administrator shall have all powers and duties conferred by the court as to the custody, collection, administration, closure, and liquidation of the property and business. The court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver’s or administrator’s custody or possession of the property, assets, and business or may, with the consent of the presiding judge of the circuit, require that all such suits be assigned to the judge appointing the receiver or administrator.

(G) In addition to, or in lieu of, any other remedies provided under this chapter, the division may apply to the court hearing the matter for an order directing the defendant to make restitution of those sums shown by the department to have been obtained in violation of this chapter.

Section 34‑42‑290. A person may not use the resources of the courts of this State in furtherance of a claim in any related civil forfeiture action or a claim in a third party proceeding in any related forfeiture action if that person purposely leaves the jurisdiction of this State or the United States, declines to enter or reenter this State to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.”

SECTION 3. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3760. An individual taxpayer is allowed a credit against the tax imposed pursuant to Section 12‑6‑510 for any fees paid for the transmission of money pursuant to Section 34‑42‑120.”

SECTION 4. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑