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June 20, 2016

The Honorable Bill Rabon
North Carolina Senate
16 W. Jones Street, Room 311
Raleigh, NC 27601-2808
Bill.Rabon@ncleg.net

The Honorable Bob Rucho
North Carolina Senate
16 W. Jones Street, Room 300-A
Raleigh, NC 27601-2808
Bob.Rucho@ncleg.net

The Honorable Jerry Tillman
North Carolina Senate
16 W. Jones Street, Room 309
Raleigh, NC 27601-2808
Jerry.Tillman@ncleg.net

Re: Support for the NC Money Transmitters Act

Dear Senators Rabon, Rucho and Tillman:

Thank you for the opportunity to speak at the Senate Finance Committee Meeting on Tuesday, June 14, 2016 regarding Senate Bill 680, the NC Money Transmitters Act. Respectfully, on behalf of the Chamber of Digital Commerce, we urge your support for this bill (H 289 / S 680).

After first introducing the Chamber and its mission, the comments below offer the Chamber's perspective on (1) the NC Money Transmitters Act; and (2) additional comments to questions raised during the meeting on June 14, 2016.

Brief Introduction to the Chamber of Digital Commerce

The Chamber is the world's largest trade association representing the digital asset and blockchain industry. The Chamber represents a wide range of companies innovating with and investing in blockchain-based and distributed ledger technologies, including financial institutions, exchanges, software companies and fintech start-ups¹. Our mission is to promote the acceptance and use of digital assets and blockchain-based technologies. Through education, advocacy, and working closely with policymakers, regulatory agencies, and industry, our goal is to develop a pro-growth legal environment that fosters innovation, jobs, and investment.

We recognize that it is critical for legislators, regulators, and the entire policy making community to have an authoritative, high-integrity source of information to guide them in the appropriate treatment of these new and innovative technologies. The Chamber of Digital Commerce and our members stand ready to be a dedicated resource to the North Carolina General Assembly and look forward to our continued engagement.

Why the North Carolina Money Transmitter Act Is Important to the Chamber

The North Carolina Money Transmitter Act (the “Act”) would update the state’s existing law in a number of important ways, including the addition of a definition for the term, “virtual currency,” and clarify which utilizations of virtual currency trigger licensure under the Act. While current North Carolina law can clearly be read to cover certain virtual currency-related business models, its language remains ambiguous as to others, and, in particular, as to companies using the underlying technology for applications other than payments. The Act would not only clarify the licensure requirement as to a variety of virtual currency-related business models, but it would also make important distinctions between companies using virtual currency (like bitcoin), and ones that use the underlying software technology (like blockchains or distributed ledgers).

This bill is pro-business, technology, jobs, investment, and innovation in North Carolina and will be attractive to new businesses thinking about locating in North Carolina and to existing businesses that are already located in North Carolina and utilizing virtual currency and blockchain technology.

Virtual currency and blockchain technology has captured the imaginations of thousands of innovators around the globe. If allowed to flourish, this technology will provide benefits to consumers as groundbreaking as the invention of railroads, automobiles, telephones and the internet itself. Prominent venture capitalists, financial institutions and technology companies, including IBM, Red Hat, Cisco, Wells Fargo, Fidelity, Bank of America, USAA, Visa, PwC, Deloitte, Microsoft, Citi, and many others have dedicated significant resources to study, experiment, and innovate with blockchain technology.

The NC Money Transmitters Act represents a thoughtful approach to virtual currency regulation that supports the financial and technology industries.

Additional Comments on Questions Raised During Finance Committee Meeting

We would also like to provide additional comments regarding the questions that were raised during Tuesday’s Committee meeting from Members.

1. Is the surety bond requirement high enough?

The Chamber of Digital Commerce and other industry members advocated for a lower requirement than the current (\$250,000). We even asked for a

small business exemption from the bond requirements altogether. This was not the approach the drafter took. Instead, the proposed Act carries the maximum cap on surety bonds over from the current law in North Carolina; a cap that the legislature previously deemed appropriate. Further, as the Commissioner of Banks explained at the hearing, a surety bond is really the very last resort for recourse against entities that have violated their licensure requirements. Prior to that, the Commissioner of Banks and the consumers served by the entity at issue would look to that entity's permissible investments.

2. Does this Act make virtual currency legal tender?

No, in order for virtual currency to be considered legal tender it would need to be expressly authorized by US Department of Treasury as such.

See 31 U.S.C. § 5103:

“United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.”

Further, virtual currency is not legal tender in any jurisdiction and FinCEN defines virtual currency as a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.

See FIN-2013-G001: https://fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html

Notably, the issue of the definition of money under the Uniform Commercial Code (“UCC”) is immaterial to any interpretation or application of either the existing or proposed Money Transmitters Act. The Act at issue and the current law both contain concepts of monetary value sufficient to govern virtual currency, and whether a separate piece of legislation eventually amends the definition of money in the North Carolina UCC or not would have no impact on the interpretation and application of the money transmission law to virtual currency-related businesses. The Act's approach to the definition of virtual currency is consistent with the work being done by the Conference of State Bank Supervisors and the Uniform Law Commission. The other UCC related issues can be taken up by future legislation if necessary and desirable to North Carolina, however, regardless of any such effort (or lack thereof), the proposed Money Transmitter Act would stand and operate as written and intended.

As a practical matter, pursuant to the U.S. Constitution Article 1 § 10 cl. 1, no State has the authority to make anything other than gold or silver coin legal tender.

We welcome the opportunity to discuss this bill further with you. Thank you for your support.

Sincerely,

DocuSigned by:
Perianne Boring
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Perianne Boring
Founder and President
Chamber of Digital Commerce

CC:

Sen. David L. Curtis
Sen. Fletches L. Hartsell, Jr.
Sen. Ronald J. Rabin
Sen. Rick Gunn
Rep. Stephen M. Ross
Sen. John M. Alexander, Jr.
Sen. Tom Apodaca
Sen. Chad Barefoot
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ⁱ For a full list of Chamber Member companies, please visit:
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