

With New Law, Tenn. Joins Money Movement's Modern Era

By **Katy Ryan, Jedd Bellman and Samantha Goldberg-Seder** (June 9, 2023)

Tennessee's recent passage of the Money Transmission Modernization Act, or MTMA, signals a continued effort to modernize regulation of money transmission across the U.S. The MTMA, is a model law developed by industry and state experts and approved by the Conference of State Bank Supervisors, or CSBS, a state regulatory trade association governed by state financial regulators.

The CSBS was created to harmonize disparate money transmission laws, reduce friction across the financial regulatory landscape and improve outcomes for consumers, regulators and industry alike. This is in line with a report by the U.S. Department of the Treasury highlighting the need for such action by state regulators.[1]

Tennessee's April 4 adoption reflects Tennessee's commitment to ushering in a new era in money transmission.

History of the MTMA

The number of money transmitters licensed in at least 40 states has more than doubled since 2015, with states recognizing the need to modernize their regulatory regimes to confront the transforming money-movement landscape. To that end, the CSBS convened a fintech industry advisory panel in 2018 to develop recommendations for streamlining state licensing and supervision.[2]

Those recommendations formed the basis of the MTMA, which was approved in full by the CSBS board of directors in August 2021.[3] Since then, state legislatures have been working to pass the MTMA in part or in whole.

In May 2022, Arizona was the first state to enact the MTMA in full, following quickly on the heels of West Virginia, which adopted significant portions of the MTMA in March 2022.

As states continue to adopt the MTMA, we are cautiously optimistic that further benefits to regulators and industry will be realized by both improving the variety and quality of services offered to consumers, as well as simplifying the regulatory experience through cross-border consistencies.

However, as with any 50-state endeavor, there are questions that remain around implementation and the true consistency in application of the MTMA from state to state.

Eight states have adopted the MTMA in full, with another five states adopting significant portions of the model law.[4] Another four states have bills to enact all or a significant portion of the MTMA advancing through the legislative process.[5]

What the Tennessee MTMA Will Change



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Nationwide Multistate Licensing System and Registry

The new law expressly authorizes the Tennessee Department of Financial Institutions to use the Nationwide Multistate Licensing System and Registry, or NMLS, to collect and maintain records; coordinate multistate licensing processes and supervision processes; process fees; and facilitate communication between the state and licensees or other persons subject to the new law.[6] It also authorizes the Department of Financial Institutions to require applicants and licensees to use the NMLS, to promulgate related rules, and to utilize NMLS forms, processes and functionalities.[7]

Exemptions

Currently, Tennessee's money transmission law exempts only (1) the U.S. and its departments and agencies; (2) the state of Tennessee and its political subdivisions; (3) national and state banks, trust companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks; and (4) certain insurance transactions.[8]

A number of new and important exemptions have been adopted with the MTMA, including, for example:[9]

- **Agent of the payee:** While previously Tennessee had been willing to approve agent of the payee relationships on a case-by-case basis, the new law exempts persons operating as an agent of the payee for a merchant where there is (1) written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf; (2) the payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and (3) payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee.[10]
- **Government benefits:** The electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency on its behalf by a contractor will be expressly exempted.
- **Other financial services entities:** The Tennessee MTMA also exempts, where certain qualifications are met, registered futures commission merchants, securities broker-dealers, and certain boards of trades, to the extent of their operations in those roles.
- **Public interest exemption:** In addition to more specific clarity around exemptions, the Tennessee MTMA also grants the commissioner authority to exempt any person where such exemption is "in the public interest and ... regulation of such person is not necessary for the purposes of this chapter."[11]

- Transmission timing: Current licensees should also be sure to pay attention to changes in compliance requirements. For example, the new law requires all money received for transmission be forwarded "in accordance with the terms of the agreement" unless the licensee has a reasonable belief or reasonable basis to believe certain crimes or violations have occurred.[12] A licensee must also refund any money received for transmission upon written request for such refund unless the money was forwarded within ten days or if, in accordance with the agreement for transmission, instructions have been given committing the transmission of said funds.[13] This timing language — standard for the MTMA — is just one way in which the new law provides clarity to money transmitters as to Tennessee's expectations of money transmitters

Virtual Currency

The MTMA offers an optional virtual currency component that not all states are adopting. For example, cryptocurrency is not referenced in Tennessee's newly adopted MTMA, and it appears that the state's established precedent of excluding virtual currency from its money transmission and currency exchange laws will continue.

According to the Tennessee Department of Financial Institutions, "cryptocurrency is not money under the Tennessee Money Transmission Act, receiving it in exchange for a promise to make it available at a later time or different location is not money transmission." [14]

As states make decisions about how to regulate the cryptocurrency marketplace, we expect disparate applications of the MTMA as well as other regulatory regimes that pursue a unique state-specific model in lieu of the MTMA paradigm, such as New York's virtual currency business activity license.[15]

What Comes Next

Tennessee's MTMA is emblematic of increasing industry efforts to support modernization and streamline regulation in the money transmission industry. Clear statutory language allows applicants and licensees to understand the requirements and expectations set by regulators, and consistent state-to-state requirements and expectations ideally serve to lighten the regulatory burden imposed by the application review process and ongoing regulations.

It is now up to the states to leverage their work through the CSBS both to enact the MTMA and to promote consistent implementation. A more transparent and open system enables innovation by fintechs while enhancing consumer protection.

We hope Tennessee's implementation of the act's comprehensive provisions promotes regulatory clarity and consistency, transparency and operational efficiency, in line with the interests of Tennessee.

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[1] https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf ("It is important that state regulators strive to achieve greater harmonization, including considering drafting of model laws that could be uniformly adopted for financial services companies currently challenged by varying licensing requirements of each state.").

[2] <https://www.csbs.org/policy/fintech-industry-advisory-panel-recommendations>.

[3] <https://www.csbs.org/csbs-model-money-transmission-modernization-act>.

[4] [https://www.csbs.org/sites/default/files/2023-05/2022%20and%202023%20MTMA%20update%20for%20website%20\(1\).pdf](https://www.csbs.org/sites/default/files/2023-05/2022%20and%202023%20MTMA%20update%20for%20website%20(1).pdf).

[5] [https://www.csbs.org/sites/default/files/2023-05/2022%20and%202023%20MTMA%20update%20for%20website%20\(1\).pdf](https://www.csbs.org/sites/default/files/2023-05/2022%20and%202023%20MTMA%20update%20for%20website%20(1).pdf).

[6] Tenn. Code § 45-7-111(b) (effective 1/1/2024).

[7] Tenn. Code § 45-7-112 (effective 1/1/2024).

[8] Tenn. Code § 45-7-104.

[9] Tenn. Code § 45-7-104 (effective 1/1/2024).

[10] Tenn. Code § 45-7-104(2) (effective 1/1/2024).

[11] Tenn. Code § 45-7-104(14) (effective 1/1/2024).

[12] Tenn. Code § 45-7-129 (effective 1/1/2024).

[13] Tenn. Code § 45-7-130 (effective 1/1/2024).

[14] <https://www.tn.gov/content/dam/tn/financialinstitutions/new-docs/TDFI%20Memo%20on%20Virtual%20Currency.pdf>.

[15] 23 NYCRR Part 200.