

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Committee Substitute

for

Senate Bill 505

BY SENATOR AZINGER AND NELSON

[Originating in the Committee on Banking and

Insurance; reported on February 8, 2022]

1 A BILL to amend and reenact §32A-2-1, §32A-2-2, §32A-2-3, §32A-2-4, §32A-2-8, §32A-2-10,
2 §32A-2-11, §32A-2-13, §32A-2-24, and §32A-2-25 of the Code of West Virginia, as
3 amended; and to amend said code by adding two new sections thereto, designated §32A-
4 2-8a and §32A-2-8b, all relating to the licensure and regulation of money transmitters;
5 updating definitions; eliminating outdated provisions; clarifying the financial institution
6 exemption; permitting the Commissioner of Financial Institutions to participate in the
7 multistate licensing and examination process and to conduct examinations; updating net
8 worth requirements to use a sliding scale; providing information requirements for a change
9 in control and updating the change in control process; specifying requirements for
10 individuals in control of a licensee or applicant; requiring permissible investments to match
11 outstanding obligations; and updating the due process procedure to eliminate the two-step
12 process for revocations and suspensions while preserving the order and hearing
13 requirement.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION
SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.**

§32A-2-1. Definitions.

1 (a) "Acting in concert" means persons knowingly acting together with a common goal of
2 jointly acquiring control of a licensee whether or not pursuant to an express agreement.

3 (b) "Average daily money transmission liability" means the amount of the licensee's
4 outstanding money transmission obligations in this state at the end of each day in a given period
5 of time, added together, and divided by the total number of days in the given period of time. For
6 purposes of calculating average daily money transmission liability, the given period of time shall
7 be the quarters ending March 31, June 30, September 30, and December 31.

8 (c) "Check" means any check, traveler's check, draft, money order, or other instrument for
9 the transmission or payment of money whether or not the instrument is negotiable. "Check" does
10 not include a credit card voucher or a letter of credit.

11 (d) "Closed loop stored value" means stored value that is redeemable by the issuer only
12 for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate,
13 except to the extent required by applicable law to be redeemable in cash for its cash value.

14 (4) ~~(e)~~ "Commissioner" means the Commissioner of Financial Institutions of this state.

15 ~~(2) "Check" or "payment instrument" means any check, traveler's check, draft, money~~
16 ~~order or other instrument for the transmission or payment of money whether or not the instrument~~
17 ~~is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument~~
18 ~~that is redeemable by the issuer in goods or services~~

19 ~~(3)~~ (f) "Control" means:

20 (1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting
21 interests of a licensee or person in control of a licensee;

22 (B) The power to elect or appoint a majority of key individuals or executive officers,
23 managers, directors, trustees, or other persons exercising managerial authority of a person in
24 control of a licensee; or

25 (C) The power to exercise, directly or indirectly, a controlling influence over the
26 management or policies of a licensee or person in control of a licensee.

27 (2) Rebuttable presumption of control:

28 (A) A person is presumed to exercise a controlling influence when the person holds the
29 power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting
30 interests of a licensee or person in control of a licensee.

31 (B) A person presumed to exercise a controlling influence as defined in this section can
32 rebut the presumption of control if the person is a passive investor.

33 (3) For the purposes of determining the percentage of a person controlled by any other
34 person, the person's interest shall be aggregated with the interest of any other immediate family
35 member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-
36 law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who
37 shares such person's home.

38 ~~“Currency” means a medium of exchange authorized or adopted by a domestic or foreign~~
39 ~~government.~~

40 (4) (g) “Currency exchange” means the conversion of the currency of one government into
41 the currency of another government, but it does not include the issuance and sale of travelers
42 checks denominated in a foreign currency. Transactions involving the electronic transmission of
43 funds by licensed money transmitters which may permit, but do not require, the recipient to obtain
44 the funds in a foreign currency outside of West Virginia are not currency exchange transactions:
45 *Provided*, That they are not reportable as currency exchange transactions under federal laws and
46 regulations.

47 ~~(5) (h)~~ “Currency exchange, transportation, transmission business” means a person who
48 is engaging in currency exchange, currency transportation, or currency transmission as a service
49 or for profit.

50 ~~(6) (i)~~ “Currency transmission” or “money transmission” means (1) engaging in the
51 business of selling or issuing checks or the business of receiving currency, the payment of money,
52 or other value that substitutes for money by any means for the purpose of transmitting, either prior
53 to or after receipt, that currency; or (2) payment of money or other value that substitutes for money
54 by wire, facsimile, or other electronic means, or through the use of a financial institution, financial
55 intermediary, the Federal Reserve system, or other funds transfer network. It includes the
56 transmission of funds through the issuance and sale of stored value or similar prepaid products'
57 cards which are intended for general acceptance and used in commercial or consumer

58 transactions. It also includes payroll processing services. It does not include the provision solely
59 of online or telecommunications services or network access.

60 ~~(7)~~ (i) “Currency transportation” means knowingly engaging in the business of physically
61 transporting currency from one location to another in a manner other than by a licensed armored
62 car service exempted under section three of this article.

63 ~~(8)~~ (k) “Key individual” or “principal” means any individual ultimately responsible for
64 establishing or directing policies and procedures of the licensee, such as an executive officer,
65 manager, director, or trustee.

66 (l) “Licensee” means a person licensed by the commissioner under this article.

67 ~~(9)~~ (m) “Money” or “currency” means a medium of exchange that is authorized or adopted
68 by the United States or a foreign government and includes a monetary unit of account established
69 by an intergovernmental organization or by agreement between two or more governments.

70 (n) “Money order” means any instrument for the transmission or payment of money in
71 relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his
72 or her agent for the receipt, transmission, or handling of money, whether the instrument is signed
73 by the seller, the purchaser, or remitter, or some other person.

74 (o) “MSB accredited state” means a state agency that is accredited by the Conference of
75 State Bank Supervisors and Money Transmitter Regulators Association for money transmission
76 licensing and supervision.

77 (p) “Nationwide Multistate Licensing System and Registry” or “NMLS” means the system
78 developed by the Conference of State Bank Supervisors and the American Association of
79 Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC,
80 or any successor or affiliated entity, for the licensing and registration of persons in the financial
81 services industries.

82 (q) “Outstanding money transmission obligations” shall mean:

83 (1) Any payment instrument or stored value issued or sold by the licensee to a person
84 located in the United States or reported as sold by an authorized delegate of the licensee to a
85 person that is located in the United States that has not yet been paid or refunded by or for the
86 licensee or escheated in accordance with applicable unclaimed property laws; or

87 (2) Any money received for transmission by the licensee or an authorized delegate in the
88 United States from a person located in the United States that has not been received by the payee
89 or refunded to the sender or escheated in accordance with applicable unclaimed property laws.

90 (3) For purposes of this subsection, "in the United States" shall include, to the extent
91 applicable, a person in any state, territory, or possession of the United States, the District of
92 Columbia, the Commonwealth of Puerto Rico, or a United States military installation that is located
93 in a foreign country.

94 (r) "Passive investor" means a person that:

95 (1) Does not have the power to elect a majority of key individuals or executive officers,
96 managers, directors, trustees, or other persons exercising managerial authority of a person in
97 control of a licensee;

98 (2) Is not employed by and does not have any managerial duties of the licensee or person
99 in control of a licensee;

100 (3) Does not have the power to exercise directly or indirectly a controlling influence over
101 the management or policies of a licensee or person in control of a licensee; and

102 (4) Either:

103 (A) Attests to subdivisions (1), (2), and (3) of this subsection in a form prescribed by the
104 commissioner or

105 (B) Commits to the passivity characteristics of subdivisions (1), (2), and (3) of this
106 subsection in a written document.

107 (s) "Payment instrument" means a written or electronic check, draft, money order,
108 traveler's check, or other written or electronic instrument for the transmission of payment of money

109 or monetary value, whether or not negotiable and does not include stored value or any instrument
110 that: (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate
111 or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be
112 redeemable in cash for its cash value, or (2) not sold to the public but issued and distributed as
113 part of a loyalty, rewards, or promotional program.

114 (t) "Payroll processing services" means receiving money for transmission pursuant to a
115 contract with a person to deliver wages or salaries, making payment of payroll taxes to state and
116 federal agencies, making payments relating to employee benefit plans, or making distributions of
117 other authorized deductions from wages and salaries: *Provided*, That it does not include an
118 employer performing payroll processing services on its own behalf or on behalf of an affiliate or a
119 professional employment organization subject to regulation under other applicable state law.

120 ~~(10)~~ (u) "Person" means any individual, partnership, association, joint stock association,
121 limited liability company, trust, or corporation.

122 ~~(11) "Principal" means a licensee's owner, president, senior officer responsible for the~~
123 ~~licensee's business, chief financial officer or any other person who performs similar functions or~~
124 ~~who otherwise controls the conduct of the affairs of a licensee. A person controlling ten percent~~
125 ~~or more of the voting stock of any corporate applicant is a principal under this provision.~~

126 (v) "Stored value" means monetary value representing a claim against the issuer
127 evidenced by an electronic or digital record and that is intended and accepted for use as a means
128 of redemption for money or monetary value, or payment for goods or services. The term includes,
129 but is not limited to, "prepaid access" as defined by 31 C.F.R. § 1010.100, as amended or
130 recodified from time to time. Notwithstanding the foregoing, the term "stored value" does not
131 include a payment instrument, closed loop stored value, or stored value not sold to the public but
132 issued and distributed as part of a loyalty, rewards, or promotional program.

133 (w) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible
134 assets, less liabilities, as determined in accordance with United States generally accepted
135 accounting principles.

§32A-2-2. License required.

1 (a) Except as provided by §32A-2-3 of this code, a person may not engage in the business
2 of currency exchange, transportation, or transmission in this state without a license issued under
3 this article. For purposes of this article, a person is considered to be engaging in those businesses
4 in this state if he or she makes available, from a location inside or outside this state, an Internet
5 website West Virginia citizens may access in order to enter into those transactions by electronic
6 means.

7 ~~(b) Any person who was previously licensed as a check seller under this chapter who~~
8 ~~holds a valid license on the effective date of this article shall be issued a provisional license under~~
9 ~~this article without the need of an additional application and fee. This provisional license shall~~
10 ~~expire upon six months of its issuance, during which time the licensee may continue to conduct~~
11 ~~its check selling business, provided that it maintains the net worth and security required under its~~
12 ~~previous license. The commissioner may require the licensee to obtain expanded bond coverage~~
13 ~~consistent with this article for the protection of purchasers of money transmission services and~~
14 ~~currency exchange services, as well as for covered currency transportation services, when the~~
15 ~~licensee conducts one or more of these businesses. At the expiration of a provisional license~~
16 ~~granted by this section, any person who wishes to continue to engage in any business regulated~~
17 ~~in this article shall apply for a license and meet the criteria under the provisions of this article. A~~
18 ~~provisional license granted by this section may upon hearing be suspended or revoked by the~~
19 ~~commissioner for good cause shown~~

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of this article:

2 (1) Banks, trust companies, foreign bank agencies, credit unions, savings banks, and
3 savings and loan associations authorized to do business in the state ~~or~~ and which qualify as
4 federally insured depository institutions, whether organized under the laws of this state, any other
5 state, or the United States;

6 (2) The United States and any department or agency of the United States;

7 (3) The United States Postal Service;

8 (4) This state and any political subdivision of this state;

9 (5) The provision of electronic transfer of government benefits for any federal, state, or
10 county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor
11 for and on behalf of the United States or any department, agency, or instrumentality of the United
12 States, or any state or any political subdivisions of a state;

13 (6) Persons engaged solely in the business of currency transportation who operate an
14 armored car service in this state pursuant to licensure under §30-18-1 *et seq.* of this code:
15 *Provided*, That the net worth of the licensee exceeds \$5 million. The term “armored car service”
16 as used in this article means a service provided by a person transporting or offering to transport,
17 under armed security guard, currency, or other things of value in a motor vehicle specially
18 equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify
19 the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons
20 seeking an exemption under this subdivision are not exempt from the provisions of this article if
21 they also engage in currency exchange or currency transmission;

22 (7) Persons engaged in the business of currency transportation whose activities are limited
23 exclusively to providing services to federally insured depository institutions, or to any federal,
24 state, or local governmental entities;

25 (8) Persons engaged solely in the business of removing currency from vending machines
26 providing goods or services if the machines are not used for gambling purposes or to convey any
27 gambling ticket, token, or other device used in a game of chance;

28 (9) The State Regulatory Registry, LLC, which administers the Nationwide ~~Mortgage~~
29 Multistate Licensing System and Registry on behalf of states and federal banking regulators;

30 (10) The North American Securities Administrators Association and any subsidiaries,
31 which administer the Electronic Filing Depository system on behalf of state securities regulators;
32 and

33 (11)(A) Persons operating a payment system that provides processing, clearing, or
34 settlement services between or among persons who are all excluded by this section in connection
35 with wire transfers, credit card transactions, debit card transactions, prepaid access transactions,
36 automated clearinghouse transfers, or similar funds transfers;

37 (B) Contracted service providers of an entity set forth in §32A-2-3(a)(1) of this code that
38 provide processing, clearing, or settlement services in connection with wire transfers, credit card
39 transactions, debit card transactions, prepaid access transactions, automated clearinghouse
40 transfers, or similar funds transfers; or

41 (C) Persons facilitating payment for goods or services (not including currency transmission
42 or money transmission itself) pursuant to a contract with the payee and either payment to the
43 person or persons facilitating the payment processing satisfies the payor's obligation to the payee
44 or that obligation is extinguished.

45 (b) Any person who holds and maintains a valid license under this article may engage in
46 the business of money transmission or currency exchange at one or more locations through or by
47 means of an authorized delegate or delegates as set forth in §32A-2-27 of this code, as the
48 licensee may designate and appoint from time to time. No such authorized delegate is required
49 to obtain a separate license under this article, but the use of sub-delegates is prohibited, and the
50 authorized delegate may only conduct business on behalf of its licensee.

51 (c) The issuance and sale of closed loop stored value cards or similar prepaid products
52 which are intended to purchase items only from the issuer or seller of the closed loop stored value
53 card is exempt from the provisions of this article.

54 (d) Any person who is required and properly obtains a license under this article to transport
55 currency is exempt from the requirements of §30-18-1 *et seq.* of this code.

§32A-2-4. License application, issuance, and renewal.

1 (a) An applicant for a license shall submit an application to the commissioner on a form
2 prescribed by the commissioner. The commissioner may direct an applicant to file a license
3 application through the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry operated
4 by the State Regulatory Registry, LLC.

5 (b) Each application shall be accompanied by a nonrefundable application fee and a
6 license fee. If the application is approved, the application fee is the license fee for the first year of
7 licensure.

8 (c) The commissioner shall issue a license if the commissioner finds that the applicant
9 meets the requirements of this article and the rules adopted under this article. The commissioner
10 shall approve or deny every application for an original license within 120 days from the date a
11 complete application is submitted, unless the commissioner extends the period for good cause.
12 All licenses issued under this article expire on December 31 of the year issued, unless sooner
13 suspended or revoked, and are subject to renewal for the following year.

14 (d) The licensee at each office it owns and operates in West Virginia shall prominently
15 display, or maintain available for inspection, a copy of the license authorizing the conduct of a
16 currency exchange business if the location offers and provides such services. Where the currency
17 exchange business is conducted through a licensee's authorized delegates in this state, each
18 authorized delegate location offering such services shall maintain available for inspection proof
19 of their appointment by the licensee to conduct such business.

20 (e) As a condition for renewal of a license, the licensee must submit to the commissioner
21 an application for renewal on a form prescribed by the commissioner and an annual license
22 renewal fee. The commissioner may direct an applicant to file a license renewal application

23 through the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry operated by the State
24 Regulatory Registry, LLC.

25 (f) A license issued under this article may not be transferred or assigned.

26 (g) An applicant for a license who is not located in this state shall file an irrevocable
27 consent, duly acknowledged, that suits and actions may be commenced against the applicant in
28 the courts of this state by service of process upon a person located within the state designated to
29 accept service, or by service upon the Secretary of State, as well as by service as set forth in this
30 chapter.

31 (h) The commissioner is authorized to participate in the multistate supervisory process,
32 including any multistate investigatory, examination, and licensing process, established between
33 states and coordinated through the Conference of State Bank Supervisors, Money Transmitter
34 Regulators Association, and affiliates and successors thereof, for all licensees that hold licenses
35 in this state and other states.

§32A-2-8. Qualifications for license or renewal of license.

1 (a) The commissioner may issue a license to an applicant only upon first determining that
2 the financial condition, business experience, and character and general fitness of an applicant
3 are such that the issuance of the license is in the public interest: *Provided*, That the commissioner
4 shall apply §32A-2-8(f) and §32A-2-8(g) of this code in determining whether an applicant's prior
5 criminal convictions bear a rational nexus to the license being sought.

6 (b) An applicant for a license shall agree in writing to comply with the currency reporting
7 and record-keeping requirements of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R.
8 Chapter X and any other relevant federal law.

9 (c) A person is not eligible for a license or shall surrender an existing license if, during the
10 previous five years:

11 (1) The person or a principal of the person, of a business:

12 (A) Has been convicted of a felony or a crime involving fraud or deceit under the laws of
13 this state, any other state, or the United States;

14 (B) Has been convicted of a crime under the laws of another country that involves fraud
15 or deceit or would be a felony if committed in the United States; or

16 (C) Has been convicted under a state or federal law relating to currency exchange or
17 transmission or any state or federal monetary instrument reporting requirement; or

18 (2) The person, a principal of the person, or the spouse of the person or a principal of the
19 person has been convicted of an offense under a state or federal law relating to drug trafficking,
20 money laundering, or a reporting requirement of the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*,
21 as amended.

22 (d) The commissioner will review the application to determine whether the applicant:

23 (1) Has recklessly failed to file or evaded the obligation to file a currency transaction report
24 as required by 31 U.S.C. §5313 during the previous three years;

25 (2) Has recklessly accepted currency for exchange, transport, or transmission during the
26 previous three years in which a portion of the currency was derived from an illegal transaction or
27 activity;

28 (3) Will conduct its authorized business within the bounds of state and federal law,
29 including, but not limited to, §31D-15-1501 of this code;

30 (4) Warrants the trust of the community;

31 (5) Has and will maintain at all times a minimum tangible net worth of ~~\$50,000~~ the greater
32 of \$100,000 or three percent of total assets for the first \$100 million, two percent of additional
33 assets for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion,
34 computed according to United States generally accepted accounting principles as shown by the
35 most recent audited financial statement filed with and satisfactory to the commissioner, and in
36 ~~addition has and will maintain a minimum tangible net worth of \$25,000, computed according to~~
37 ~~generally accepted accounting principles for each office or delegate location other than its~~

38 ~~principal office at which its licensed business is transacted~~ except that an applicant for a license
39 or renewal of a license may not be required by this article to maintain a tangible net worth of more
40 than \$1 million, computed according to generally accepted accounting principles; and

41 (6) Does not owe delinquent taxes, fines, or fees to any local or state taxing authority or
42 governmental agency, department, or other political subdivision of this state.

43 (e) A person is not eligible for a license, and a person who holds a license shall surrender
44 the license to the commissioner, if the person or a principal of the person has at any time been
45 convicted of:

46 (1) A felony involving the laundering of money that is the product of or proceeds from
47 criminal activity under chapter 61 of this code, or a similar provision of the laws of another state
48 or the United States; or

49 (2) A felony violation of 31 U.S.C. §5313 or 5324, or a rule adopted under those sections.

50 (f) The commissioner may not disqualify an applicant from initial licensure because of a
51 prior criminal conviction that remains unreversed unless that conviction is for a crime that bears
52 a rational nexus to the activity requiring licensure. In determining whether a criminal conviction
53 bears a rational nexus to a profession or occupation, the commissioner shall consider at a
54 minimum:

55 (1) The nature and seriousness of the crime for which the individual was convicted;

56 (2) The passage of time since the commission of the crime;

57 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
58 duties and discharge the responsibilities of the profession or occupation; and

59 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

60 (g) Notwithstanding any other provision of this code to the contrary, if an applicant is
61 disqualified from licensure because of a prior criminal conviction, the commissioner shall permit
62 the applicant to apply for initial licensure if:

63 (1) A period of five years has elapsed from the date of conviction or the date of release
64 from incarceration, whichever is later;

65 (2) The individual has not been convicted of any other crime during the period of time
66 following the disqualifying offense; and

67 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
68 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
69 of disqualification from licensure, to be determined by the commissioner.

70 (h) An individual with a criminal record who has not previously applied for licensure may
71 petition the commissioner at any time for a determination of whether the individual's criminal
72 record will disqualify the individual from obtaining a license. This petition shall include sufficient
73 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
74 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
75 The commissioner shall provide the determination within 60 days of receiving the petition from
76 the applicant. The commissioner may charge a fee to recoup its costs for each petition.

77 (i) Before approving an application for a license of an applicant who has less than one
78 year's experience in the proposed business governed by this article as a regulated entity in
79 another state, or whose license has been suspended or revoked by another state, the
80 commissioner may, in his or her discretion, conduct an on-site investigation of an applicant at the
81 sole expense of the applicant and may require the applicant to pay a nonrefundable payment of
82 the anticipated expenses for conducting the investigation. Failure to make the payment or
83 cooperate with the investigation is grounds for denying the application.

§32A-2-8a. Information requirements for certain individuals and change in control.

1 (a) Any individual in control of a licensee or applicant, any individual that seeks to acquire
2 control of a licensee, and each key individual shall furnish to the commissioner the following items:

3 (1) The individual's fingerprints for submission to the Federal Bureau of Investigation and
4 the commissioner for purposes of a national criminal history background check unless the person

5 currently resides outside of the United States and has resided outside of the United States for the
6 last 10 years;

7 (2) Personal history and experience in a form and in a medium prescribed by the
8 commissioner, to obtain the following:

9 (A) An independent credit report from a consumer reporting agency unless the individual
10 does not have a Social Security number, in which case this requirement shall be waived;

11 (B) Information related to any criminal convictions or pending charges; and

12 (C) Information related to any regulatory or administrative action and any civil litigation
13 involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of
14 fiduciary duty, or breach of contract.

15 (b) If the individual has resided outside of the United States at any time in the last 10 years,
16 the individual shall also provide an investigative background report prepared by an independent
17 search firm that meets the following requirements:

18 (1) At a minimum, the search firm shall:

19 (A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and
20 reasonable methodologies to conduct the research of the background report; and

21 (B) Not be affiliated with or have an interest with the individual it is researching.

22 (2) At a minimum, the investigative background report shall be written in the English
23 language and shall contain the following:

24 (A) If available in the individual's current jurisdiction of residency, a comprehensive credit
25 report, or any equivalent information obtained or generated by the independent search firm to
26 accomplish such report, including a search of the court data in the countries, provinces, states,
27 cities, towns, and contiguous areas where the individual resided and worked;

28 (B) Criminal records information for the past 10 years, including, but not limited to, felonies,
29 misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities,
30 towns, and contiguous areas where the individual resided and worked;

31 (C) Employment history;

32 (D) Media history, including an electronic search of national and local publications, wire
33 services, and business applications; and

34 (E) Financial services-related regulatory history, including, but not limited to, money
35 transmission, securities, banking, insurance, and mortgage-related industries.

36 (c) Any person, or group of persons acting in concert, seeking to acquire control of a
37 licensee shall obtain the written approval of the commissioner prior to acquiring control. An
38 individual is not deemed to acquire control of a licensee and is not subject to these acquisition of
39 control provisions when that individual becomes a key individual in the ordinary course of
40 business.

41 (d) A person, or group of persons acting in concert, seeking to acquire control of a licensee
42 shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed
43 by the commissioner.

44 (e) Upon request, the commissioner may permit a licensee or the person, or group of
45 persons acting in concert, to submit some or all information required by the commissioner without
46 using NMLS.

47 (f) The application required by this section shall include information required for any new
48 key individuals that have not previously completed the requirements for a licensee.

49 (g) When an application for acquisition of control under this section appears to include all
50 the items and address all of the matters that are required, the application shall be considered
51 complete and:

52 (1) The commissioner shall approve or deny the application within 90 days after the
53 completion date; or

54 (2) If the application is not approved or denied within 90 days after the completion date,
55 the application is deemed approved, and the person, or group of persons acting in concert, are
56 not prohibited from acquiring control.

57 (3) The commissioner may extend the application period for good cause.

58 (h) A determination by the commissioner that an application is complete and is accepted
59 for processing means only that the application, on its face, appears to include all of the items and
60 address all of the matters that are required, and is not an assessment of the substance of the
61 application or of the sufficiency of the information provided.

62 (i) When an application is filed and considered complete, the commissioner shall
63 investigate the financial condition and responsibility, financial and business experience,
64 character, and general fitness of the person, or group of persons acting in concert, seeking to
65 acquire control. The commissioner shall approve an acquisition of control pursuant to this section
66 if the commissioner finds that all of the following conditions for the change in control have been
67 fulfilled:

68 (1) The requirements of subsections (d) and (f) of this section have been met, as
69 applicable; and

70 (2) The financial condition and responsibility, financial and business experience,
71 competence, character, and general fitness of the person, or group of persons acting in concert,
72 seeking to acquire control, and the competence, experience, character, and general fitness of the
73 key individuals and persons that would be in control of the licensee after the acquisition of control
74 indicate that it is in the interest of the public to permit the person, or group of persons acting in
75 concert, to control the licensee.

76 (j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

77 (1) The commissioner is authorized to accept the investigation results of a lead
78 investigative state if the lead investigative state has sufficient staffing, expertise, and minimum
79 standards; or

80 (2) If the division is a lead investigative state, the commissioner is authorized to investigate
81 the applicant and the time frames established by agreement through the multistate licensing
82 process.

83 (k) The commissioner shall issue a formal written notice of the denial of an application to
84 acquire control within 30 days of the decision to deny the application. The commissioner shall set
85 forth in the notice of denial the specific reasons for the denial of the application. An applicant
86 whose application is denied under this section may appeal the denial using the procedures set
87 forth in §32A-2-6 of this code.

88 (l) The requirements of subsections (c) and (d) of this section do not apply to any of the
89 following:

90 (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting
91 of the shareholders or holders of voting shares or voting interests of a licensee or a person in
92 control of a licensee;

93 (2) A person that acquires control of a licensee by devise or descent;

94 (3) A person that acquires control of a licensee as a personal representative, custodian,
95 guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction
96 or by operation of law;

97 (4) A person that is otherwise exempt under this article;

98 (5) A person that the commissioner determines is not subject to subsection (c) of this
99 section based on the public interest;

100 (6) A public offering of securities of a licensee or a person in control of a licensee; or

101 (7) An internal reorganization of a person in control of the licensee where the ultimate
102 person in control of the licensee remains the same.

103 (m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section in
104 cooperation with the licensee shall notify the commissioner within 15 days after the acquisition of
105 control.

106 (n) Streamlined acquisition of control:

107 (1) The requirements of subsections (c) and (d) of this section do not apply to a person
108 that has complied with and received approval to engage in money transmission under this article

109 or was identified as a person in control in a prior application filed with and approved by the
110 commissioner or by an MSB accredited state pursuant to a multistate licensing process, *Provided,*

111 That:

112 (A) The person has not had a license revoked or suspended or controlled a licensee that
113 has had a license revoked or suspended while the person was in control of the licensee in the
114 previous five years;

115 (B) If the person is a licensee, the person is well managed and has received at least a
116 satisfactory rating for compliance at its most recent examination by an MSB accredited state if
117 such rating was given;

118 (C) The licensee to be acquired is projected to meet the requirements of net worth, surety
119 bond, and permissible investments after the acquisition of control is completed, and if the person
120 acquiring control is a licensee, that licensee is also projected to meet the requirements of net
121 worth, surety bond, and permissible investments after the acquisition of control is completed;

122 (D) The licensee to be acquired will not implement any material changes to its business
123 plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that
124 licensee also will not implement any material changes to its business plan as a result of the
125 acquisition of control; and

126 (E) The person provides notice of the acquisition in cooperation with the licensee and
127 attests to the requirements in this subsection in a form and in a medium prescribed by the
128 commissioner.

129 (2) If the notice is not disapproved within 30 days after the date on which the notice was
130 determined to be complete, the notice is deemed approved.

131 (o) Before filing an application for approval to acquire control of a licensee, a person may
132 request in writing a determination from the commissioner as to whether the person would be
133 considered a person in control of a licensee upon consummation of a proposed transaction. If the

134 commissioner determines that the person would not be a person in control of a licensee, the
135 proposed person and transaction is not subject to the requirements of this section.

§32A-2-8b. Permissible Investments.

1 (a) A licensee shall maintain at all times permissible investments that have a market value
2 computed in accordance with United States generally accepted accounting principles of not less
3 than the aggregate amount of all of its outstanding money transmission obligations.

4 (b) Except for the permissible investments that are set forth in subsection (e) of this
5 section, the commissioner, with respect to any licensee, may limit the extent to which a specific
6 investment maintained by a licensee within a class of permissible investments may be considered
7 a permissible investment, if the specific investment represents undue risk to customers, not
8 reflected in the market value of the investments.

9 (c) Permissible investments, even if commingled with other assets of the licensee, are
10 held in trust for the benefit of the purchasers and holders of the licensee's outstanding money
11 transmission obligations in the event of insolvency, the filing of a petition by or against the licensee
12 under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified
13 from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee
14 for receivership, the commencement of any other judicial or administrative proceeding for its
15 dissolution or reorganization, or in the event of an action by a creditor against the licensee who is
16 not a beneficiary of this statutory trust. No permissible investments impressed with a trust
17 pursuant to this section shall be subject to attachment, levy of execution, or sequestration by
18 order of any court, except for a beneficiary of this statutory trust.

19 (d) Upon the establishment of a statutory trust in accordance with subsection (c) of this
20 section or when any funds are drawn on a letter of credit pursuant to subdivision (4) of subsection
21 (e) of this section, the Commissioner shall notify the applicable regulator of each state in which
22 the licensee is licensed to engage in money transmission, if any, of the establishment of the trust
23 or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if

24 performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit,
25 and any other permissible investments held in trust for the benefit of the purchasers and holders
26 of the licensee's outstanding money transmission obligations, are deemed held in trust for the
27 benefit of such purchasers and holders on a pro rata and equitable basis in accordance with
28 statutes pursuant to which permissible investments are required to be held in this state, and other
29 states, as applicable. Any statutory trust established hereunder shall be terminated upon
30 extinguishment of all of the licensee's outstanding money transmission obligations.

31 (e) Types of permissible investments are as follows:

32 (1) Cash, including demand deposits, savings deposits, and funds in such accounts held
33 for the benefit of the licensee's customers in a federally insured depository financial institution,
34 and cash equivalents;

35 (2) Certificates of deposit or senior debt obligations of an insured depository institution, as
36 defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended
37 or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section
38 1781, as amended or recodified from time to time;

39 (3) An obligation of the United States or a commission, agency, or instrumentality thereof;
40 an obligation that is guaranteed fully as to principal and interest by the United States; or an
41 obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

42 (4) The full drawable amount of an irrevocable standby letter of credit for which the stated
43 beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft
44 under the letter of credit and present it to obtain funds up to the letter of credit amount;

45 (5) One hundred percent of the surety bond provided pursuant to §32A-2-10 of this code
46 that exceeds the average daily money transmission liability in this state; and

47 (6) Any other permissible investments determined by the commissioner to be acceptable.

48 Permissible investments pursuant to this subdivision shall be published on the commissioner's

49 website and updated at least annually. Licensees may propose that the commissioner place
50 certain investments on the list of permissible investments at the commissioner's discretion.

§32A-2-10. Bond.

1 (a) A person who is licensed under this article shall post a bond with a qualified surety
2 company doing business in this state that is acceptable to the commissioner. The bond shall be
3 in the amount of \$100,000 for a licensee which issues or sells checks or money orders, or which
4 engages in currency exchange; or \$300,000 for a licensee which engages in receiving money for
5 transmission by wire, facsimile, or electronic transfer, or which engages in currency
6 transportation. A licensee which engages in multiple types of these activities shall post the higher
7 amount. A merchant obtaining a license solely to engage in the check cashing business not
8 incidental to the main business of the merchant as required by §32A-3-1 *et seq.* of this code shall
9 post a bond of \$100,000. The bond required by this subsection shall be increased at the time of
10 license renewal by one percent of the annual volume of business the licensee conducts in this
11 state exceeding \$10 million rounded to the nearest thousand, as reported by the licensee:
12 *Provided*, That in no event shall the bond exceed \$1 million.

13 (b) No cash deposit or pledge of cash equivalent in instruments or securities may be
14 accepted in lieu of the bond required by subsection (a) of this section. ~~unless such alternative~~
15 ~~deposit or pledge was in effect prior to April 1, 2014.~~

16 (c) A bond posted by a licensee shall be conditioned upon compliance with the provisions
17 of this article and any rules thereunder for as long as the person holds the license. The deposit
18 or bond, as the case may be, shall be made to the State of West Virginia for the benefit and
19 protection of any claimant against the applicant or licensee with respect to the receipt, handling,
20 transmission, and payment of money by the licensee or authorized delegate in connection with
21 the licensed operations in this state. A claimant damaged by a breach of the conditions of the
22 bond or deposit shall, upon the assent of the commissioner, have a right of action against the
23 bond or deposit for damages suffered thereby and may bring suit directly thereon, or the

24 commissioner may bring suit on behalf of the claimant. The aggregate liability of the surety in no
25 event shall exceed the principal sum of the bond.

26 (d) A penalty fee under §32A-2-5(a)(5) of this code, expenses under §32A-2-11 of this
27 code, or a civil penalty under §32A-2-19 of this code may be paid out of and collected from the
28 proceeds of a bond under this section.

29 (e) After receiving a license, the licensee shall maintain the required bond until five years
30 after it ceases to do business in this state unless all outstanding ~~checks/payment instruments~~
31 transactions are cleared or covered by the provisions of §36-8-1 *et seq.* of this code pertaining to
32 the distribution of unclaimed property which have become operative and are adhered to by the
33 licensee. Notwithstanding this provision, however, the commissioner may permit the bond to be
34 reduced following cessation of business in the state to the extent the amount of the licensee's
35 checks/payment instruments outstanding in this state are reduced.

36 (f) If the commissioner at any time reasonably determines that the required bond or deposit
37 is insecure, deficient in amount, or exhausted, in whole or in part, he or she may in writing require
38 the filing of a new or supplemental bond in order to secure compliance with this article and may
39 demand compliance with the requirement within 30 days following service on the licensee. The
40 total amount of the bonds required of the licensee may not, however, exceed the \$1 million set
41 forth in subsection (a) of this section.

§32A-2-11. Examination and fraudulently structured transactions.

1 (a) Each licensee is subject to a periodic examination of the licensee's business records
2 by the commissioner at the expense of the licensee. For the purpose of carrying out this article,
3 the commissioner may examine all books, records, papers, or other objects that the commissioner
4 determines are necessary for conducting a complete examination and may also examine under
5 oath any person associated with the license holder, including an officer, director, or employee of
6 the licensee or authorized delegate. Unless it will interfere with the commissioner's duties under
7 this article, reasonable notice shall be given to the licensee and any authorized delegate before

8 any on-site examination visit. If a person required by the commissioner to submit to an
9 examination refuses to permit the examination or to answer any question authorized by this
10 article, the commissioner may suspend the person's license until the examination is completed.

11 (b) The licensee shall bear the reasonable and necessary per diem and travel expense
12 cost of any on-site examination made pursuant to this section.

13 (c) A person, for the purpose of evading a reporting or record-keeping requirement of 31
14 U.S.C. §5313, or 31 C.F.R. Chapter X, or by this article, or a rule ~~adopted~~ authorized under this
15 article, may not with respect to a transaction with a licensee:

16 (1) Cause or attempt to cause the licensee to:

17 (A) Not maintain a record or file a report required by a law listed by this subsection; or

18 (B) Maintain a record or file a report required by a law listed by this subsection that
19 contains a material omission or misstatement of fact; or

20 (2) Fraudulently structure the transaction.

21 (d) For the purposes of this article, a person fraudulently structures a transaction if the
22 person conducts or attempts to conduct a transaction in any amount of currency with a licensee
23 in a manner having the purpose of evading a recordkeeping or reporting requirement of this article,
24 or of a law, or rule listed by subsection (c) of this section, including the division of a single amount
25 of currency into smaller amounts or the conduct of a transaction or series of transactions in
26 amounts equal to or less than the reporting or record-keeping threshold of a law, or rule listed by
27 subsection (c) of this section.

28 (e) A transaction is not required to exceed a recordkeeping or reporting threshold of a
29 single licensee on a single day to be a fraudulently structured transaction.

30 (f) The commissioner may conduct an examination in conjunction with an examination
31 conducted by representatives of other state agencies or agencies of another state or of the federal
32 government and may accept the examination report of another state agency or an agency of
33 another state or of the federal government.

§32A-2-13. Notification requirements.

1 (a) A licensee shall notify the commissioner of any change in its principal place of
2 business, or its headquarters office if different from its principal place of business, within 15 days
3 after the date of the change.

4 (b) A licensee shall notify the commissioner of any of the following significant
5 developments within 15 days after gaining actual notice of its occurrence:

6 (1) The filing of bankruptcy or for reorganization under the bankruptcy laws;

7 (2) The institution of any enforcement action including, but not limited to, a license
8 revocation or suspension against the licensee by any other state or federal regulator;

9 (3) A felony indictment related to money transmission, currency exchange, fraud, failure
10 to fulfill a fiduciary duty or other activities of the type regulated under this article of the licensee or
11 its authorized delegates in this state, or of the licensee's or authorized delegate's officers,
12 directors, or principals;

13 (4) A felony conviction or plea related to the money transmission, currency exchange,
14 fraud, failure to fulfill a fiduciary duty or other activities of the type regulated under this article of
15 the licensee or its authorized delegates in this state, or of the licensee's or authorized delegate's
16 officers, directors, or principals; and

17 (5) Any change in its business activities.

18 (c) A licensee shall notify the commissioner of any merger or acquisition which may result
19 in a change of control or a change in principals of a licensee at least 60 days prior to the
20 announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice
21 of these circumstances by a corporate licensee, the commissioner may require all information
22 necessary to determine whether it results in a transfer or assignment of the license and thus if a
23 new application is required in order for the company to continue doing business under this article.
24 A licensee that is an entity other than a corporation shall in these circumstances submit a new
25 application for licensure at the time of notice.

26 (d) The commissioner may direct that the reports required by this section and any other
27 reports, data, or information deemed necessary by the commissioner be filed directly with the
28 Division of Financial Institutions on a date to be determined by the commissioner or through the
29 Nationwide Mortgage ~~Multistate~~ Licensing System and Registry operated by the State Regulatory
30 Registry, LLC.

§32A-2-24. Confidential information.

1 (a) Reports of investigation and examination, together with related documents and
2 financial information not normally available to the public that is submitted in confidence by a
3 person regulated under this article, including, but not limited to, that person's evaluation of the
4 expected outcome of pending litigation, are confidential and may not be disclosed to the public
5 by the commissioner or employees of the Division of ~~Banking~~ Financial Institutions, and are not
6 subject to the state's freedom of information act. The commissioner may release information if:

7 (1) The commissioner finds that immediate and irreparable harm is threatened to the
8 licensee's customers or potential customers or the general public;

9 (2) The licensee consents before the release;

10 (3) The commissioner finds that release of the information is required in connection with
11 a hearing under this article, in which event information may be related to the parties of that
12 hearing; or

13 (4) The commissioner finds that the release is reasonably necessary for the protection of
14 the public and in the interest of justice, in which event information may be distributed to
15 representatives of an agency, department, or instrumentality of this state, any other state, or the
16 federal government.

17 (b) Nothing in this section prevents release to the public of any list of licensees or
18 aggregated financial data for the licensees, prevents disclosure of information the presiding officer
19 considers relevant to the proper adjudication or administration of justice at public administrative

20 or judicial hearings, or prevents disclosure of information relevant to supporting the issuance of
21 any administrative or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

1 (a) A license may not be revoked or suspended except after notice and opportunity for
2 hearing on that action. The commissioner may issue to a person licensed under this article an
3 order ~~to show cause why the license should not be revoked, or should not be suspended to revoke~~
4 a license or to suspend a license for a period not in excess of six months. The order shall ~~state~~
5 the place for a hearing and set a time for the hearing that is no less than ten days from the date
6 of the order provide notice of opportunity for a hearing, inform that any request for hearing must
7 be filed within 30 days of service of a copy of the order revoking or suspending the license, and
8 set forth how the recipient may request such a hearing. The hearing shall be conducted in
9 accordance with the provisions of §29A-5-1 *et seq.* of this code. The commissioner may appoint
10 a hearing examiner to preside at the hearing and make a recommended decision. ~~After the~~
11 ~~hearing the~~ The commissioner ~~shall~~ may revoke or suspend the license if he or she finds that:

12 (1) The licensee has knowingly or repeatedly violated this chapter or any rule or order
13 lawfully made or issued pursuant to this article;

14 (2) The licensee has failed to remit its required renewal fees;

15 (3) Facts or conditions exist which would clearly have justified the commissioner in
16 refusing to grant a license had these facts or conditions been known to exist at the time the
17 application for the license was made;

18 (4) The licensee does not have available the net worth required by ~~the provisions of §32A-~~
19 ~~2-8 of this code, and after 10 days' written notice from the commissioner, fails to take steps that~~
20 ~~the commissioner determines are necessary to remedy the deficiency; or~~

21 (5) The licensee has failed or refused to keep the bond or other security required by §32A-
22 2-10 of this code in full force and effect.

23 (b) No revocation or suspension of a license under this article is lawful unless prior to
24 ~~institution of proceedings by the commissioner~~ notice is given to the licensee of the facts or
25 conduct which warrant the intended action and the licensee is given an opportunity to show
26 compliance with all lawful requirements for retention of the license.

27 (c) If the commissioner finds that probable cause for revocation of a license exists and
28 that enforcement of this article to prevent imminent harm to public welfare requires immediate
29 suspension of the license pending investigation, the commissioner may, after a hearing upon five
30 days' written notice, enter an order suspending the license for not more than 30 days.

31 (d) Nothing in this section limits the authority of the commissioner to take action against a
32 licensee or person under other sections of this article.

33 (e) Whenever the commissioner revokes or suspends a license, an order to that effect
34 shall be entered and the commissioner shall forthwith notify the licensee of the revocation or
35 suspension. Within five days after the entry of the order the commissioner shall mail by registered
36 or certified mail, or shall provide for personal delivery to the licensee, a copy of the order and the
37 findings supporting the order.

38 (f) Any person holding a license under this article may relinquish the license by notifying
39 the commissioner in writing of its relinquishment, but any relinquishment does not affect a
40 person's liability for acts previously committed.

41 (g) No revocation, suspension, or relinquishment of a license impairs or affects the
42 obligation of any preexisting lawful contract between the licensee and any person.

43 (h) The commissioner may reinstate a license, terminate a suspension, or grant a new
44 license to a person whose license has been revoked or suspended if no fact or condition then
45 exists which clearly would have justified the commissioner in refusing to grant a license.