WEST VIRGINIA CODE CHAPTER 32A

WV Legislature

§32A-1-1. Filing and registration with respect to lands prerequisite to sale, etc., within state.

No person, partnership or corporation shall sell or offer for sale, in this state, any lands, situate outside this state, which are to be planted in trees or vines or divided into town or suburban lots, or any unimproved or undeveloped lands, or any lands, including cemetery lots, cemetery privileges, burial rights or privileges, the value of which materially depends on the future performance of any stipulation or promise to furnish irrigation, transportation facilities, streets, sidewalks, sewers, gas, electricity or other value enhancing utility or improvement of any undivided part or share, whether an aliquot part or a part designated on any other basis, or any mine, mineral claim, or other estate in any mine, or in the lands containing the same, regardless of where located or situated, the value of which materially depends on the future discovery or development and production of the minerals, without first having filed with the commissioner of securities (which office is established in chapter thirty-two of this code) a detailed description of the property which, or any interest or part or share of which, is proposed to be sold, and such information with respect to the value thereof, and the title to such property or properties as the commissioner of securities shall require, and without causing such property to be registered by the commissioner of securities in the manner provided for the registration of securities by qualification under section three hundred four, article three, chapter thirty-two of this code; and no person shall sell or offer any such property for sale until he has been registered as a salesman by the commissioner of securities under the provisions for registering agents contained in article two, chapter thirty-two of this code. All of the provisions contained in chapter thirty-two of this code governing the registration of securities by qualification and the registration of agents and the penalties provided therein shall apply to the registration of properties and salesmen under this article: Provided, That nothing contained in this article shall prevent any bona fide owner of any such land, mine, mining lease, mineral claim or other property, or interest therein, from selling the same on his own account and not as a part, or in furtherance, of any promotion or development to the public.

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§32A-1-2. False advertising prohibited; penalty.

Any person or corporation who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person or corporation, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter, or by way of radio or television, or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact which is untrue, deceptive or misleading, with knowledge that the same was untrue, deceptive or misleading, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $2,000, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

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§32A-1-3. Indictment need not negative exceptions.

In any indictment for violation of any provision of this article, it shall not be necessary to negative any exception contained in any proviso or elsewhere in this article.

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§32A-2-1. Definitions.

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

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

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

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

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

(f) "Control" means:

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

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

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

(2) Rebuttable presumption of control:

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

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

(3) For the purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate

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family member, including the person’s spouse, parents, children, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares such person’s home.

(g) "Control of virtual currency," when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction.

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

(i) "Currency exchange, transportation, transmission business" means a person who is engaging in currency exchange, currency transportation, or currency transmission as a service or for profit.

(j) "Currency transmission" or "money transmission" means, directly or through an authorized delegate: (1) Engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency; (2) Payment of money or other value that substitutes for money by wire, facsimile, or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system, digital wallet, including, but not limited to, a digital wallet used in connection with a consumer payment mobile application, or other funds transfer network; or (3) Engaging in the business of owning or operating a virtual currency kiosk. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products’ cards which are intended for general acceptance and used in commercial or consumer transactions. It also includes payroll processing services. It does not include the provision solely of online or telecommunications services or network access.

(k) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(l) "Digital wallet" means any electronic or digital functionality that:

(1) Stores value or virtual currency for a customer, including, but not limited to, in encrypted or tokenized form; and

(2) Transmits, routes, or otherwise processes such stored value or virtual currency to facilitate a payment transaction.

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(m) "Elder adult" means a person who is 60 years of age or older.

(n) "Exchange", used as a verb, includes to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:

(1) Virtual currency for money, bank credit, or one or more forms of virtual currency; or

(2) Money or bank credit for one or more forms of virtual currency.

(o) "Existing customer" means a consumer who:

(1) Is engaging in a transaction at a virtual currency kiosk in this state; and

(2) Has been registered for more than 10 days as a customer of the owner of the virtual currency kiosk or virtual currency kiosk operator.

(p) "Key individual" or "principal" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(q) "Licensee" means a person licensed by the commissioner under this article.

(r) "Money" or "currency" means a medium of exchange that is authorized or adopted by the United States or a foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

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

(t) "Money transmission kiosk" or "virtual currency kiosk" means an automated electronic machine that allows users to engage in money transmission, including any machine that is capable of accepting or dispensing cash in exchange for virtual currency. "Money transmission kiosk" or "virtual currency kiosk" does not include consumer cellular telephones and similar personal devices.

(u) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

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

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(w) "New customer" means a consumer who is engaging in a virtual currency transaction in this state and has been registered for 10 days or less as a customer of the owner of a virtual currency kiosk or virtual currency kiosk operator.

(x) "Outstanding money transmission obligations" shall mean:

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

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

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

(y) "Passive investor" means a person that:

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

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

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

(4) Either:

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

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

(z) "Payment instrument" means a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission of payment of money or monetary value, whether or not negotiable, and does not include stored value or any instrument that: (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required

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by applicable law to be redeemable in cash for its cash value, or (2) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

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

(bb) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust, or corporation.

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

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

(ee) "Transfer" includes to assume control of virtual currency from or on behalf of a person and to:

(1) Credit the virtual currency to the account of another person;

(2) Move the virtual currency from one account of a person to another account of the same person; or

(3) Relinquish control of virtual currency to another person.

(ff) "U.S. Dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual currency exchange based in the United States for a particular date or period specified in this article.

(gg) "Virtual currency" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not money, whether or not denominated in money. Virtual currency does not include:

(1) A transaction in which a merchant grants, as part of an affinity or rewards program,

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value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or

(2) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

(hh) "Virtual currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.

(ii) "Virtual currency business activity" means:

(1) Exchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control-services vendor;

(2) Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(3) Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:

(A) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received;

(B) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

(jj) "Virtual currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

(kk) "Virtual currency kiosk operator" means a person who engages in virtual currency business activity through a money transmission kiosk located in this state or a person that owns, operates, solicits, markets, advertises, manages, or facilitates a money transmission kiosk located in this state through which virtual currency business activity is offered.

(ll) "Virtual currency storage" means:

(1) Maintaining possession, custody, or control over virtual currency on behalf of another person, including as a virtual currency control-services vendor;

(2) Issuing, transferring, or otherwise granting or providing to any person in this state any claim or right or any physical, digital, or electronic instrument, receipt, certificate, or record

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representing any claim or right to receive, redeem, withdraw, transfer, exchange, or control any virtual currency; or

(3) Receiving possession, custody, or control over virtual currency from a person in this state in return for a promise or obligation to return, repay, exchange, or transfer such virtual currency or a like amount of such virtual currency.

(mm) "Virtual currency wallet" means a software application or other mechanism providing a means for holding, storing, and transferring virtual currency.

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§32A-2-2. License required.

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

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§32A-2-3. Exemptions.

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

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

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

(3) The United States Postal Service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) As a condition for renewal of a license, the licensee must submit to the commissioner an application for renewal on a form prescribed by the commissioner and an annual license renewal fee. The commissioner may direct an applicant to file a license renewal application through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

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

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

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

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(i) A virtual currency kiosk operator doing business in West Virginia prior to the effective date of the amendments to this article made during the regular session of the Legislature, 2026, shall make application through NMLS for licensure within 90 days of the effective date of this section. Applicants must provide a list of delegate locations within NMLS at the time of application and include the appropriate fee.

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§32A-2-5. Fees.

(a) The commissioner shall charge and collect the license application fees, license fees, license renewal fees, and examination costs in amounts reasonable and necessary to defray the cost of administering this article as follows:

(1) For applying for a license, an application and licensing fee of $1,000, plus $20 for each location at which the applicant and its authorized delegates are conducting business or propose to conduct business excepting the applicant's principal place of business.

(2) For renewal of a license, a fee of $250 plus $5 for each location at which the licensee and its authorized delegates are conducting business or propose to conduct business excepting the applicant's principal place of business, plus an assessment of up to $.001 for every dollar of transmission services provided in the prior year.

(3) The total of fees required by subdivisions (1) or (2) of this subsection may not exceed $25,000 for any one application.

(4) For a change in address by the licensee of its principal place of business, a fee of $100.

(5) For failure to timely submit an application of renewal or file audited financial statements required for renewal as set forth in this article, a penalty fee of $10 per day for each day late, unless an extension of time has been granted or the fee waived by the commissioner.

(b) The commissioner may, by rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, amend the fees set forth in this section and in subsection (b), section eleven of this article.

(c) Fees and moneys received and collected under this article shall be paid into the special revenue account in the State Treasury for the Division of Financial Institutions established in section eight, article two, chapter thirty-one-a of this code.

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§32A-2-6. Denial of license or renewal of license.

(a) The commissioner may deny the grant of a license or renewal of a license for a failure to comply or otherwise meet the requirements and qualifications of this article or a rule adopted under this article, including failure to submit a complete application.

(b) The denial of a license or denial of renewal by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under the provisions of article five, chapter twenty-nine-a of this code and shall conform to that provided for financial institutions pursuant to sections one and two, article eight, chapter thirty-one-a of this code and the rules thereunder.

(c) Whenever the commissioner refuses to issue a license, or refuses to renew a license, he or she shall make and enter an order to that effect and shall cause a copy of the order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be.

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§32A-2-7. Authorization to propose rules.

The commissioner may propose rules necessary to implement this article for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Warrants the trust of the community;

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(5) Has and will maintain at all times a minimum tangible net worth of the greater of $100,000 or three percent of total assets for the first $100 million, two percent of additional assets for $100 million to $1 billion, and 0.5 percent of additional assets for over $1 billion, computed according to United States generally accepted accounting principles as shown by the most recent audited financial statement filed with and satisfactory to the commissioner, except that an applicant for a license or renewal of a license may not be required by this article to maintain a tangible net worth of more than $1 million, computed according to generally accepted accounting principles; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last 10 years;

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

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

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

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

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

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

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

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

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

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

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

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(C) Employment history;

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

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

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

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

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

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

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

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

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

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

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

(i) When an application is filed and considered complete, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire

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control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions for the change in control have been fulfilled:

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

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

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

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

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

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

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

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

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

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

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

(5) A person that the commissioner determines is not subject to subsection (c) of this section

based on the public interest;

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

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

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

(n) Streamlined acquisition of control:

(1) The requirements of subsections (c) and (d) of this section do not apply to a person that has complied with and received approval to engage in money transmission under this article or was identified as a person in control in a prior application filed with and approved by the commissioner or by an MSB accredited state pursuant to a multistate licensing process, *Provided*, That:

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

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

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

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

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

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

(o) Before filing an application for approval to acquire control of a licensee, a person may

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request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of this section.

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§32A-2-8b. Permissible Investments.

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

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

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

(d) Upon the establishment of a statutory trust in accordance with subsection (c) of this section or when any funds are drawn on a letter of credit pursuant to subdivision (4) of subsection (e) of this section, the Commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established hereunder shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) Types of permissible investments are as follows:

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

(2) Certificates of deposit or senior debt obligations of an insured depository institution, as

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defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

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

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

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

(6) Any other permissible investments determined by the commissioner to be acceptable. Permissible investments pursuant to this subdivision shall be published on the commissioner's website and updated at least annually. Licensees may propose that the commissioner place certain investments on the list of permissible investments at the commissioner's discretion.

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§32A-2-8c. Virtual Currency Kiosk Requirements.

(a) A licensee, in establishing a relationship with a user and before entering into an initial virtual currency transaction on behalf of or with the user, shall disclose in clear, conspicuous, and legible writing all material risks associated with virtual currency generally. The material risks associated with virtual currency required to be disclosed include without limitation:

(1) A disclosure that is acknowledged by the customer, provided separately from the disclosures provided under subdivisions (2) and (7) of this subsection, and written prominently and in bold type stating the following: "WARNING: LOSSES DUE TO FRAUDULENT OR ACCIDENTAL TRANSACTIONS MAY NOT BE RECOVERABLE AND TRANSACTIONS IN VIRTUAL CURRENCY MAY BE IRREVERSIBLE.";

(2) Virtual currency is not backed or insured by the government, and accounts and value balances are not subject to protections of the Federal Deposit Insurance Corporation, National Credit Union Administration, or Securities Investor Protection Corporation;

(3) A virtual currency transaction may be deemed to be made when recorded on a public ledger which may not be the date or time when the customer initiates the virtual currency transaction;

(4) The value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency which may result in the permanent and total loss of the value of a particular virtual currency if the market for that virtual currency disappears;

(5) The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in a significant loss over a short period of time;

(6) A bond maintained by the licensee for the benefit of the customers of the licensee may not be sufficient to cover all losses incurred by customers; and

(7) Virtual currency transactions may be irreversible and may be used by a person seeking to defraud customers, including, but not limited to, a person impersonating a customer’s family or friends, threatening jail time, stating that a customer’s identity has been stolen, insisting that a customer withdraw money from the customer’s bank account and purchase virtual currency, or alleging that a customer’s personal computer has been hacked.

(b) A licensee, when opening an account for a new customer and before entering into an initial virtual currency transaction for, on behalf of, or with the customer, shall disclose in clear, conspicuous, and legible writing, using not less than 24 point sans-serif-type font, all relevant terms and conditions associated with the products, services, and activities of the licensee and virtual currency generally. The disclosure shall include without limitation:

(1) The customer’s liability for unauthorized virtual currency transactions;

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(2) The customer's right to stop execution of a preauthorized virtual currency transfer and the procedure used to stop execution of the transaction;

(3) The circumstances under which the licensee, absent a court or government order, will disclose information concerning the customer's account to third parties;

(4) The requirement that the licensee communicate to the customer what customer information may be disclosed to third parties;

(5) The customer's right to receive a receipt for a virtual currency transaction at the time of the transaction;

(6) Upon a change in the rules or policies of the owner or operator, the customer's right to consent to the changed rules or policies before performing a transaction after the change; and

(7) Any other disclosures that are customarily provided in connection with opening a person's account.

(c) A licensee, before each transaction in virtual currency for, on behalf of, or with a customer, shall disclose to the customer in an easily readable manner that is in clear, conspicuous, and legible writing to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, using not less than 24 point sans-serif-type font, the terms and conditions of the virtual currency transaction. The terms and conditions shall include without limitation:

(1) The amount of the transaction;

(2) Any fees, expenses, and charges borne by the customer, including without limitation, applicable exchange rates;

(3) The type and nature of the virtual currency transaction;

(4) A warning that, once executed, the virtual currency transaction may not be undone, if applicable;

(5) A daily virtual currency transaction limit according to subsection (g) of this section;

(6) The difference in the sale price of the virtual currency versus the current market price; and

(7) Any other disclosures that are customarily given in connection with a virtual currency transaction.

(d) A licensee shall ensure that each customer acknowledges receipt of all disclosures required under this section.

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(e) A licensee, upon the completion of a virtual currency transaction, shall provide to the customer a written, paper receipt. The receipt shall be provided in a retainable form and may be provided electronically if the customer requests and agrees to receive an electronic receipt. The receipt shall include without limitation:

(1) The name and contact information for the licensee, including without limitation, the licensee's business address and a customer service telephone number established by the licensee to answer questions and register complaints;

(2) The name of the customer;

(3) The type, value, date, and precise time of the virtual currency transaction, transaction hash or identification number, and each virtual currency wallet address;

(4) The amount of the virtual currency transaction expressed in United States currency;

(5) The public virtual currency wallet address of the customer;

(6) The unique identifier of the virtual currency kiosk operator;

(7) A fee charged, including without limitation, a fee charged directly or indirectly by the licensee or a third party involved in the virtual currency transaction;

(8) The exchange rate, if applicable;

(9) Any tax collected by the licensee for the virtual currency transaction;

(10) A statement of the liability of the licensee for non-delivery or delayed delivery;

(11) A statement of the refund policy of the licensee;

(12) The name and telephone number of the Division of Financial Institutions and a statement disclosing that the licensee's customers may contact the division with questions or complaints about the licensee's virtual currency kiosk services; and

(13) Any additional information the commissioner may require.

(f) The following shall be the maximum daily virtual currency kiosk transaction limits:

(1) One thousand dollars for each new customer of a virtual currency kiosk; and

(2) Ten thousand dollars for each existing customer of a virtual currency kiosk.

(g) The licensee shall allow a new customer, upon the request of the customer, to cancel and receive a full refund for any fraudulent virtual currency transactions that occurred not later than 10 days after the new customer registered as a customer of the licensee if, not later than 30 days after the last virtual currency transaction that occurred during the 10-day

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period, the customer:

(1) Contacts the licensee and a government or law enforcement agency to inform them of the fraudulent nature of the virtual currency transaction; and

(2) Files a report with a government or law enforcement agency memorializing the fraudulent nature of the virtual currency transaction.

(h) Each licensee shall:

(1) Obtain a copy of a government-issued identification card that identifies each customer of the owner of the virtual currency kiosk or the virtual currency kiosk operator;

(2) Maintain restrictions that prevent more than one customer of the licensee from using the same virtual currency wallet;

(3) Be able to prevent designated virtual currency wallets from being used at a virtual currency kiosk owned or operated by the licensee;

(4) Use an established third party that specializes in performing blockchain analyses to preemptively perform the analyses to identify and prevent high risk or sanctioned virtual currency wallets from being used by customers at virtual currency kiosks owned or operated by the licensee;

(5) Define, in the licensee's policies and procedures, a risk-based method of monitoring customers of the owner of the virtual currency kiosk or the virtual currency kiosk operator on a post-transaction basis;

(6) Offer, during the hours of operation of the virtual currency kiosks owned or operated by the licensee, live customer support by telephone from a toll-free telephone number prominently displayed at or on the virtual currency kiosks;

(7) Designate a contact person available to communicate with law enforcement regarding investigations involving transactions conducted through a kiosk operated by the operator

(8) Establish an enhanced due diligence protections policy and provide enhanced due diligence protections which shall include documentation of risk-based, pre-transaction procedures designed to identify and mitigate fraud, scams, or financial exploitation, including establishing the nature and purpose of the transaction, evaluating transaction and behavioral risk indicators, and placing a temporary transaction hold of up to 72 hours where elevated risk is identified. The licensee's approval of the transaction shall be dependent upon the licensee's assessment of the enhanced due diligence protections;

(9) Designate and employ a chief compliance officer who shall:

(A) Be qualified to coordinate and monitor a compliance program to ensure compliance with

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this section and all other applicable federal laws and regulations and state laws and rules; and

(B) Own not more than 20 percent of the licensee that employs the chief compliance officer; and

(10) Use full-time employees to fulfill the licensee's compliance responsibilities under federal laws and regulations and state laws and rules.

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§32A-2-9. Access to criminal history information.

The commissioner may refuse to grant a license or may suspend or revoke a license if the applicant or licensee fails to provide information required by section four, article two, chapter thirty-one-a of this code, or other information sought by the commissioner relevant to conducting an adequate criminal background check.

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§32A-2-10. Bond.

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

(b) No cash deposit or pledge of cash equivalent in instruments or securities may be accepted in lieu of the bond required by subsection (a) of this section.

(c) A bond posted by a licensee shall be conditioned upon compliance with the provisions of this article and any rules thereunder for as long as the person holds the license. The deposit or bond, as the case may be, shall be made to the State of West Virginia for the benefit and protection of any claimant against the applicant or licensee with respect to the receipt, handling, transmission, and payment of money by the licensee or authorized delegate in connection with the licensed operations in this state. A claimant damaged by a breach of the conditions of the bond or deposit shall, upon the assent of the commissioner, have a right of action against the bond or deposit for damages suffered thereby and may bring suit directly thereon, or the commissioner may bring suit on behalf of the claimant. The aggregate liability of the surety in no event shall exceed the principal sum of the bond.

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

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

(f) If the commissioner at any time reasonably determines that the required bond or deposit is insecure, deficient in amount, or exhausted, in whole or in part, he or she may in writing require the filing of a new or supplemental bond in order to secure compliance with this

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article and may demand compliance with the requirement within 30 days following service on the licensee. The total amount of the bonds required of the licensee may not, however, exceed the $1 million set forth in subsection (a) of this section.

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

(a) Each licensee is subject to a periodic examination of the licensee's business records by the commissioner at the expense of the licensee. For the purpose of carrying out this article, the commissioner may examine all books, records, papers, or other objects that the commissioner determines are necessary for conducting a complete examination and may also examine under oath any person associated with the license holder, including an officer, director, or employee of the licensee or authorized delegate. Unless it will interfere with the commissioner's duties under this article, reasonable notice shall be given to the licensee and any authorized delegate before any on-site examination visit. If a person required by the commissioner to submit to an examination refuses to permit the examination or to answer any question authorized by this article, the commissioner may suspend the person's license until the examination is completed.

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

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

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

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

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

(2) Fraudulently structure the transaction.

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

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

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

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§32A-2-12. Investigations and subpoenas.

(a) In addition to the examinations required by section eleven of this article, the commissioner is authorized to inspect, examine and audit the books, records, accounts and papers of all licensees and their authorized delegates at times that the circumstances in his or her opinion may warrant. Unless it will interfere with the commissioner's duties under this article, reasonable notice shall be given to an authorized delegate or licensee before any on-site examination visit. However, an authorized delegate is deemed to consent to the commissioner's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the commissioner has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this article. The commissioner may call for and require any data, reports or information from any licensees under his or her jurisdiction at any time, and in the form, content and detail the commissioner determines to be necessary in the faithful discharge of his or her duty.

(b) In connection with the investigations undertaken pursuant to this article, the commissioner is authorized to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, with any subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at the hearing may be accompanied by an attorney.

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§32A-2-13. Notification requirements.

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

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

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

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

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

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

(5) Any change in its business activities.

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

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

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§32A-2-14. Records maintenance.

(a) A licensee shall keep its business books, accounts, and records in accordance with generally accepted accounting principals. A licensee shall retain all of its records of final entry for the period of time as required in section thirty-five, article four, chapter thirty-one-a of this code for banking institutions. The licensee shall also preserve its general ledger, settlement sheets from its authorized delegates, bank statements, and bank reconciliation records for this said same established period of time.

(b) Unless the documents or data therefrom has been transmitted to the licensee for recordation, the licensee shall require its authorized delegates to preserve records relating to its licensed activities for the period set forth in subsection (a) of this section.

(c) Records may be kept using retention technologies, including nonerasable optical disk, as is provided for banking institutions and with the same effect as set forth in section thirty-five, article four, chapter thirty-one-a of this code.

(d) A licensee shall maintain records relating to its business under this article at its principal place of business, or with notice to the commissioner, at another location designated by the licensee. If the records are located outside the state, the licensee at its option shall make them available to the commissioner at a convenient location within this state within seven days, or shall pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained.

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§32A-2-15. Transaction records.

(a) Every check sold by the licensee or its authorized delegates shall bear the name of the licensee and a unique number clearly stamped or imprinted thereon. When an order for the transmission of money results in the issuance of a check, both the order and the check may bear the same number.

(b) The licensee or its authorized delegates shall record the face amount and unique number of its checks upon their sale.

(c) The licensee or its authorized delegates shall record the date on which money was received for transmission, the amount transmitted, the name of the customer and the intended recipient, and the location to which the money was transmitted if specified by the customer. Unless otherwise directed by the customer, the transmission of money or availability of funds shall be made by the licensee or authorized delegate within three business days after the receipt of payment. The customer shall be provided a written receipt sufficient to identify the transaction, the licensee, and the amount.

(d) If the transaction involves the exchange of foreign currency, or the sale of travelers checks denominated in a foreign currency, the licensee or authorized delegate shall record the date of the transaction, the amount of the transaction, and the rate of exchange at the time of transaction. The customer shall be provided a written receipt sufficient to identify the transaction, the licensee, and the amount.

(e) Records required by this section shall be maintained by the licensee or authorized delegate as set forth in section fourteen of this article, and shall be available for examination by the commissioner.

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§32A-2-16. Enforcement.

The commissioner, with the assistance of the West Virginia state police, may investigate violations of this article or rules adopted under this article. Based on the investigation, the commissioner or any law-enforcement agency may file a criminal referral with the prosecuting attorney of Kanawha County or with the prosecuting attorney of the county in which a violation is alleged to have occurred. In addition, the commissioner may bring civil actions to enforce the provisions of this article or the rules adopted under this article.

WV Legislature

§32A-2-17. Cooperative agreements; inconsistencies with federal law.

(a) The commissioner shall cooperate with federal and state agencies in discharging the commissioner's responsibilities under this article. The commissioner may:

(1) Arrange for the exchange of information among government officials concerning the regulation of a currency exchange, transportation, or transmission business;

(2) Cooperate in and coordinate training programs concerning the regulation of currency exchange, transportation, or transmission businesses; and

(3) Assist state and federal agencies in their enforcement and investigatory activities and supply those agencies with documentation and information.

(b) The commissioner may request the assistance of the State Police in enforcing this article.

(c) In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between any provision of this article and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.

(d) In the event of any inconsistencies between this article and a federal law that governs pursuant to subsection (c) of this section, the commissioner may provide interpretive guidance that:

(1) Identifies the inconsistency; and

(2) Identifies the appropriate means of compliance with federal law.

WV Legislature

§32A-2-18. Criminal penalty.

(a) A person commits a criminal offense if the person knowingly:

(1) Violates a requirement of this article;

(2) Makes a false, fictitious, or fraudulent statement, representation, or entry in a record or report required under 31 U.S.C. §5313 or 31 C.F.R. Chapter X, or by this article, or a rule adopted under this article; or

(3) Fraudulently structures or attempts to fraudulently structure a transaction in violation of section eleven of this article.

(b) An offense under this section is a felony.

(c) Any officer, director, employee or agent of any licensee or any other person guilty of any felony offense as provided in this section shall, upon conviction thereof, be imprisoned in the penitentiary not less than one nor more than five years and also, in the discretion of the court, may be fined up to $10,000 for each violation. Each transaction in violation of this article and each day that a violation continues is a separate offense.

WV Legislature

§32A-2-19. Civil penalty.

(a) The commissioner may bring civil actions to enforce this article in the circuit court of Kanawha County or the county in which the violation occurred and seek civil penalties. If, after notice and a hearing, the court finds that a person has violated this article, a rule adopted under this article, or an order of the commissioner issued under this article, the court may order the person to pay to the state a civil penalty. The amount of a civil penalty under this section may not exceed $5,000 for each violation or, in the case of a continuing violation, up to $5,000 for each day that the violation continues. A civil penalty assessed may be collected from the bond required under section ten of this article.

(b) In addition to the authority granted in subsection (a) of this section, the commissioner may by administrative assessment impose a civil penalty of up to $5,000 upon any person he or she believes has violated this article, a rule promulgated under this article, any other law or rule the commissioner is authorized to enforce with respect to persons licensed under this article, or a prior order of the commissioner. For purposes of this subsection, each separate violation is subject to the penalty herein prescribed and, in the case of a continuing violation, a penalty of up to $5,000 may be assessed for each day the violation continues. Any penalty imposed under this subsection may be contested by the licensee pursuant to article five, chapter twenty-nine-a of this code. A civil penalty assessed under this subsection may be collected from the bond required under section ten of this article.

WV Legislature

§32A-2-20. Injunction.

If it appears to the commissioner that a person has committed or is about to commit a violation of this article, a rule promulgated thereunder, or an order of the commissioner, the commissioner may apply to the circuit court of Kanawha County or the county in which the violation occurred for an order enjoining the person from violating or continuing to violate the article, rule, or order and for injunctive or other relief that the nature of the case may require and may, in addition, request the court to assess civil penalties as provided under this article.

WV Legislature

§32A-2-21. Consent orders.

(a) The commissioner may enter into consent orders at any time with a person to resolve a matter arising under this article. A consent order shall be signed by the person to whom it is issued and shall indicate agreement to the terms contained in it. A consent order need not constitute an admission by a person that this article or a rule or order issued or promulgated under this article has been violated, nor need it constitute a finding by the commissioner that the person has committed a violation.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order unless by its terms the consent order expressly precludes the commissioner from doing so.

WV Legislature

§32A-2-22. Cease and desist orders.

(a) If the commissioner, upon information, has cause to believe that a licensee or other person is engaged in practices contrary to this article or the rules adopted under this article, the commissioner may issue an order directing the licensee or person to cease and desist the violation. A cease and desist order is appropriate in any case where the commissioner, upon information, reasonably believes that a principal or the licensee acting through any authorized person has:

(1) Violated or refused to comply with a provision of this article, a rule adopted under this article, or any other law or regulation applicable to a currency exchange, transportation or transmission business, or to the business of check cashing;

(2) Committed a fraudulent practice in the conduct of the licensee's business;

(3) Refused to submit to an examination;

(4) Conducted business in an unsafe or unauthorized manner;

(5) Violated any federal law or regulation pertaining to the business of currency exchange, money transportation or transmission, or the business of check cashing; or

(6) Violated any condition of its license or of any agreement entered into with the commissioner.

(b) The commissioner shall serve notice and a copy of the cease and desist order on the affected party either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the post office, postage prepaid, addressed to the last known address for a licensee or the person designated by the licensee to accept service in this state.

(c) The order shall include a statement of the alleged conduct of the licensee or principal which gave rise to the order, and set forth the facts and law on which it is based.

(d) A person is entitled to a hearing on the cease and desist order before the commissioner, or a hearing examiner appointed by him or her, if the person files with the commissioner a written demand for hearing within ten days after receiving written notice of the order, or within thirty days after the date of service, whichever occurs first. A person's right to a hearing as provided by this subsection shall be disclosed in the notice of service.

(e) Hearings and judicial review of any order shall be under procedures provided in sections one and two, article eight, chapter thirty-one-a of this code and procedural rules thereunder.

(f) The issuance of a cease and desist order under this section shall not be a prerequisite to the taking of any action by the commissioner or others under any other section of this article.

WV Legislature

§32A-2-23. Liability of licensees.

Except in cases of gross negligence or intentional acts that result in harm to a person, a licensee's responsibility to a person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument purchased.

WV Legislature

§32A-2-24. Confidential information.

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

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

(2) The licensee consents before the release;

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

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

(b) Nothing in this section prevents release to the public of any list of licensees or aggregated financial data for the licensees, prevents disclosure of information the presiding officer considers relevant to the proper adjudication or administration of justice at public administrative or judicial hearings, or prevents disclosure of information relevant to supporting the issuance of any administrative or judicial order.

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

(a) A license may not be revoked or suspended except after notice and opportunity for hearing on that action. The commissioner may issue to a person licensed under this article an order to revoke a license or to suspend a license for a period not in excess of six months. The order shall provide notice of opportunity for a hearing, inform that any request for hearing must be filed within 30 days of service of a copy of the order revoking or suspending the license, and set forth how the recipient may request such a hearing. The hearing shall be conducted in accordance with the provisions of §29A-5-1 *et seq*. of this code. The commissioner may appoint a hearing examiner to preside at the hearing and make a recommended decision. The commissioner may revoke or suspend the license if he or she finds that:

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

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

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

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

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

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

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

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

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

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the order and the findings supporting the order.

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

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

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

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§32A-2-26. Deceptive name or advertising.

(a) A licensee who advertises the prices to be charged by the currency exchange or currency transmission business for services that are governed by this article shall specifically state in the advertisement all fees or commissions to be charged to the consumer.

(b) The commissioner may propose for legislative approval rules establishing requirements for the size and type of lettering a licensee is permitted to use in an advertisement for prices or rates.

(c) A person who violates this section or a rule adopted under this section commits an unfair and deceptive act or practice within the meaning of section one hundred four, article six, chapter forty-six-a of this code.

(d) A corporate licensee may not use the same name as, or a name deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, except as otherwise provided by the commissioner or Secretary of State pursuant to law.

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§32A-2-27. Authorized delegates.

(a) A licensee may conduct the business of money transmission and currency exchange regulated by this article at one or more locations through authorized delegates designated by the licensee to conduct business on its behalf, including the physical locations of money transmission kiosks and virtual currency kiosks.

(b) A licensee may not knowingly authorize a person to act as its delegate who has, within the previous 10 years, a disqualifying criminal conviction of the type set forth in §32A-2-8(c)(2) of this code.

(c) A licensee shall enter into a contract with its authorized delegate detailing the nature and scope of the relationship between the licensee and the authorized delegate. The contract shall require that the authorized delegate operate in full compliance with the laws of this state and of the United States. The licensee shall, upon request, provide the commissioner with the sample written contract.

(d) The financial responsibility of a licensee for the actions of its authorized delegate shall not exceed the amount of funds received by the authorized delegate on behalf of its licensee for the business regulated under this article.

(e) An authorized delegate has an affirmative duty not to: (i) Commit fraud or misrepresentation; or (ii) submit fraudulent statements to the licensee. A licensee shall promptly report to the commissioner and to any other appropriate state or federal official when it has probable cause to believe that an authorized delegate has violated the affirmative duty set forth in this subsection.

(f) The licensee shall require the authorized delegate to hold in trust for the licensee from the moment of receipt of the proceeds of any business transacted under this article in an amount equal to the amount of proceeds due the licensee less the amount due the authorized delegate. The funds shall remain the property of the licensee whether or not commingled by the authorized delegate with its own funds. In the event that the license is revoked by the commissioner, all proceeds held in trust by the authorized delegate of that licensee are considered to be assigned to the commissioner. If an authorized delegate fails to remit funds to the licensee in accordance with the time specified in the contract with the licensee, the licensee may bring a civil action against the authorized delegate for three times the actual damages. The commissioner may by rule set a maximum remittance time for authorized delegates.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time the authorized delegate knew or should have known of the theft or loss.

(h) Upon any suspension or revocation of a license, the failure of a licensee to renew a license, or the denial of the renewal of a license, the licensee shall notify its authorized

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delegates of the event and demand that they immediately cease operations as authorized delegates.

(i) A licensee shall report the removal of an authorized delegate location, or the termination of operations of an authorized delegate location, including money transmission kiosks and virtual currency kiosks, to the commissioner on a quarterly basis, and shall in the report list any new authorized delegate locations, including money transmission kiosks and virtual currency kiosks, in this state.

(j) No authorized delegate shall act outside its scope of authority as defined under this article and by its contract with the licensee to act on behalf of the licensee with regard to any transaction regulated by this article.

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§32A-2-28. Revocation or suspension of authorized delegates.

(a) The commissioner may issue an order suspending an authorized delegate, or barring a person from becoming an authorized delegate of any licensee, during the period for which the order is in effect. Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order. Orders may be issued if, after notice and a hearing, the commissioner finds that any authorized delegate of a licensee or any administrator, officer, employee or principal of the authorized delegate:

(1) Has violated a provision of this article or of any rule or order issued under this article;

(2) Has engaged in or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or

(3) Has made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner a statement that was, at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in the application or report a material fact required to be stated.

(b) An authorized delegate to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner may not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will comply with all applicable provisions of this chapter and of any rule and order issued under this chapter if the order is modified or rescinded.

(c) The right of a person to whom an order is issued under this section to petition for judicial review of an order is not affected by the failure of the person to apply to the commissioner to modify or rescind the order.

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§32A-3-1. Check cashing permitted.

(a) A merchant primarily in the business of making retail consumer sales may offer check cashing services at its stores to accommodate its customers in the course of said business, and may collect a fee for the service, if the check cashing service and any fees charged are incidental to the main business of the merchant. Except as set forth in subsection (b) of this section, the term "check cashing services" does not include a transaction where a customer presents a check for the exact amount of a purchase. Fees charged in connection with check cashing services may not exceed the greater of $1, or one percent of the face value of the check cashed.

(b) Merchants may not, in connection with providing check cashing services, agree to hold checks submitted to them for deposit at a later date for the purpose of providing a loan of money and deriving profit therefrom.

(c) No license is required as a condition for a merchant providing check cashing services in conformity with subsections (a) and (b) of this section.

(d) Where a merchant derives more than five percent of his or her gross revenues from cashing checks, the check cashing services are not considered incidental to the main business of the merchant, and the merchant is required to be licensed under article two of this chapter.

(e) Persons holding a license pursuant to article two of this chapter may in conjunction with their licensed business, or other lawful business, engage in the business of check cashing in West Virginia. Fees charged for check cashing services by a licensee under article two of this chapter shall be posted and conform to those permitted merchants under this section. No licensee may in connection with providing check cashing services agree to hold checks submitted to it for deposit at a later date for the purpose of providing a loan of money and deriving profit therefrom.

(f) Federally-insured depository institutions, foreign bank agencies, and governmental entities exempt from licensure as money transmitters under this chapter are exempt from the provisions of this article. Other financial institutions licensed by and under the jurisdiction of the commissioner of banking may upon written approval engage in the check cashing business permitted merchants under this article.

(g) Except as provided or allowed by this article, no person may engage in the check cashing business. As used in this article the term "check cashing business" means any person who engages in the business of cashing checks, including drafts, money orders, or other instruments for the transmission or payment of money for a fee. However, the term "check" as used in this article does not include a travelers check or a foreign denomination check.

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§32A-3-2. Obstruction of investigations.

No merchant or person subject to this article may obstruct or refuse to permit any lawful investigation into their check cashing activities by the commissioner of banking, a person acting on behalf of an agency of the state or political subdivision thereof, or a law-enforcement officer.

WV Legislature

§32A-3-3. Violations and penalties.

(a) The charging of fees for check cashing services in excess of those permitted under this article gives rise to a cause of action by the injured party to recover twice the actual damages suffered by reason of the violation.

(b) The charging of fees for check cashing services in violation of the provisions of subsections (b) or (e), section one of this article, prohibiting lending through a check cashing transaction, constitutes prohibited finance charges, and gives rise to a cause of action by the party upon whom the charge was imposed to recover all fees paid and all actual damages suffered by reason of the violation. Where the transaction is of an amount and for purposes that would constitute a consumer loan, the conduct of impermissible check cashing services is considered an unfair and deceptive act and may be subject to provisions and penalties set forth in chapter forty-six-a of this code.

(c) Engaging in the check cashing business without the license required by this article gives rise to a cause of action by the injured party to recover all fees paid and all actual damages suffered by reason of the violation.

(d) Actions brought under this article by customers for recovery of actual damages shall be brought within one year of the occurrence of the transaction.

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§32A-3-4. Injunctions.

If any merchant or person is in violation of this article, the commissioner of banking or other appropriate law-enforcement officer may apply to the circuit court of Kanawha County or the county in which the violation occurred for an order enjoining the merchant or person from violating or continuing to violate the article, rule, or order and for injunctive or other relief that the nature of the case may require. The authority to seek injunctions under this section is cumulative with any other enforcement right accruing under other provisions of law and this code.

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