WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4591
(By Delegates Thompson, Kominar, Seacrist, Jenkins, H. White, Hutchins and L. White)

Passed March 13, 1998
In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4591

(BY DELEGATES THOMPSON, KOMINAR, SEACRIST, JENKINS, H. WHITE, HUTCHINS AND L. WHITE)

[Passed March 13, 1998; in effect ninety days from passage.]
hearing procedures; permitting the commissioner to limit certain advertising by legislative rule; permitting licensees to conduct business through authorized delegates; requiring a license for check cashing services not incidental to a merchant’s business; limiting service fees for check cashing; prohibiting check cashing loans; establishing penalties for violations; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three, all to read as follows:

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

§32A-2-1. Definitions.

1. (1) "Commissioner" means the commissioner of banking of this state.

2. (2) "Check" or “payment instrument” 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. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

3. (3) "Currency" means a medium of exchange authorized or adopted by a domestic or foreign government.

4. (4) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but 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.

(5) "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.

(6) "Currency transmission" or “money transmission”
means engaging in the business of selling or issuing
checks or the business of receiving currency for the
purpose of transmitting the currency or its equivalent by
wire, facsimile, or other electronic means, or through the
use of a financial institution, financial intermediary, the
federal reserve system, or other funds transfer network. It
includes the transmission of funds through the issuance
and sale of stored value cards which are intended for
general acceptance and use in commercial or consumer
transactions.

(7) “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.

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

(9) "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 agent for the receipt, transmission or
handling of money, whether the instrument is signed by
the seller, the purchaser or remitter, or some other person.

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

(11) "Principal" means a licensee’s owner, president,
Senior officer responsible for the licensee’s business, chief
financial officer or any other person who performs similar
functions or who otherwise controls the conduct of the
Enr. Com. Sub. for H. B. 4591] 4

affairs of a licensee. A person controlling ten percent or
more of the voting stock of any corporate applicant is a
principal under this provision.

(12) "Securities" means all bonds, debentures or other
evidences of indebtedness: (a) Issued by the United States
of America or any agency thereof, or guaranteed by the
United States of America, or for which the credit of the
United States of America or any agency thereof is pledged
for the payment of the principal and interest thereof;
and/or (b) which are direct general obligations of this state,
or any other state if unconditionally guaranteed as to the
principal and interest by the other state and if the other
state has the power to levy taxes for the payment of the
principal and interest thereof and is not in default in the
payment of any part of the principal or interest owing by
it upon any part of its funded indebtedness; and/or (c)
which are general obligations of any county, school
district or municipality in this state, issued pursuant to law
and payable from ad valorem taxes levied on all of the
taxable property located therein, if the county, school
district or municipality is not in default in the payment of
any part of the principal or interest on any debt evidenced
by its bonds, debentures or other evidences of
indebtedness.

§32A-2-2. License required.

(a) Except as provided by section three of this article,
a person may not engage in the business of currency
exchange, transportation, or transmission in this state
without a license issued under this article.

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


(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, or
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
thereof;

(3) The United States post office;

(4) This state and any political subdivision thereof;

(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;
and

(6) Persons engaged in the business of currency
transportation who operate an armored car service in this
state pursuant to licensure under article eighteen, chapter
thirty of this code: Provided, That the net worth of the
licensee exceeds five million dollars. 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.

(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 in this state through or by means of an authorized delegate or delegates as set forth in section twenty-seven of this article, as said licensee may designate and appoint from time to time, and no such authorized delegate shall be required to obtain a separate license under this article.

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

§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.

(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 one hundred twenty days from the date a complete application is submitted, unless the commissioner extends the period for good cause. A license is valid for one year from the date the license is issued by the commissioner.

(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.

(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.

§32A-2-5. Fees.

(a) The commissioner shall charge and collect the
license application fees, license fees, license renewal fees,
and examination fees 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 five hundred dollars, plus ten dollars for
each location within the state 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 two hundred
fifty dollars plus ten dollars for each location within the
state at which the licensee and its authorized delegates are
conducting business or propose to conduct business
excepting the applicant’s principal place of business.
(3) The total of fees required by subdivisions (1) or (2) of this subsection may not exceed two thousand five hundred dollars for any one application.

(4) For a change in address by the licensee of its principal place of business, a fee of one hundred dollars.

(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 ten dollars per day for each day late, unless an extension of time has been granted or the fee waived by the commissioner.

(b) Beginning one year after the effective date of this article, 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 banking established in section eight, article two, chapter thirty-one-a of this code.

§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.


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

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

1 (a) The commissioner may issue a license to an
2 applicant only upon first determining that the financial
3 condition, business experience, and character and general
4 fitness of an applicant are such that the issuance of the
5 license is in the public interest.

6 (b) An applicant for a license shall agree in writing to
7 comply with the currency reporting and record-keeping
8 requirements of 31 U.S.C. § 5313, as well as those set
9 forth in 31 C.F.R. Part 103 and any other relevant federal
10 law.

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

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

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

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

23 (C) Has been convicted under a state or federal law
24 relating to currency exchange or transmission or any state
25 or federal monetary instrument reporting requirement; or
26   (2) The person, a principal of the person, or the
27   spouse of the person or a principal of the person has been
28   convicted of an offense under a state or federal law
29   relating to drug trafficking, money laundering, or a
30   reporting requirement of the Bank Secrecy Act (Pub. L.
31   91-508).
32   
33   (d) The commissioner will review the application to
34   determine whether the applicant:
35   
36   (1) Has recklessly failed to file or evaded the
37   obligation to file a currency transaction report as required
38   by 31 U.S.C. Section 5313 during the previous three
39   years;
40   
41   (2) Has recklessly accepted currency for exchange,
42   transport, or transmission during the previous three years
43   in which a portion of the currency was derived from an
44   illegal transaction or activity;
45   
46   (3) Will conduct its authorized business within the
47   bounds of state and federal law, including, but not limited
48   to, section forty-nine, article one, chapter thirty-one of this
49   code;
50   
51   (4) Warrants the trust of the community;
52   
53   (5) Has and will maintain a minimum net worth of
54   fifty thousand dollars computed according to generally
55   accepted accounting principles as shown by the most
56   recent audited financial statement filed with and
57   satisfactory to the commissioner, and in addition has and
58   will maintain a minimum net worth of twenty-five
59   thousand dollars, computed according to generally
60   accepted accounting principles for each office or delegate
61   location in the state other than its principal office at which
62   its licensed business is transacted, except that an applicant
63   for a license or renewal of a license may not be required
64   by this article to maintain a net worth of more than one
65   million dollars, computed according to generally accepted
66   accounting principles; and
67   
68   (6) Does not owe delinquent taxes, fines, or fees to any
69   local or state taxing authority or governmental agency,
70   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 sixty-one 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. Section 5313 or 5324 or a rule adopted under those sections.

(f) 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.


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.


(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 one hundred thousand dollars for a licensee which issues or sells checks or money orders, or which engages in currency exchange; or three hundred thousand dollars 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 article three of this chapter shall post a bond
of one hundred thousand dollars. The amount of the
surety bond will be increased by twenty-five thousand
dollars per licensee location or authorized delegate in the
state, but in no event to exceed one million dollars.

(b) Instead of the bond required under subsection (a) of
this section, a licensee, with the prior written permission of
the commissioner, may deposit with the commissioner or a
federally-insured depository institution in this state
designated by the licensee and approved for that purpose
by the commissioner, United States currency or cash
equivalent instruments or securities acceptable to the
commissioner. The amount of currency or the fair market
value of the instruments or securities shall be an amount
equal to or exceeding the amount required for the bond
under subsection (a) of this section. When securities are
deposited as aforesaid, the value of the securities shall at
all times be equal to the amount of bond otherwise
required, computed on the basis of the principal amount
or the market value thereof, whichever is lower.

(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. So long as the person making a deposit under this section is not in violation of any of the provisions of this article, that person is permitted to receive all interest and dividends on the deposit, and shall have the right, with the approval of the commissioner, to substitute other securities. If the deposit is made at a bank, any custodial fees therefor shall be paid by the person making the deposit.

(d) A penalty fee under subdivision (5), subsection (a), section five of this article, expenses under section eleven of this article, or a civil penalty under section nineteen of this article may be paid out of and collected from the proceeds of a bond or deposit under this section.

(e) After receiving a license, the licensee shall maintain the required bond or securities until five years after it ceases to do business in this state unless all outstanding checks/payment instruments are cleared or covered by the provisions of article eight, chapter thirty-six 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 security 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 or other security in order to secure compliance with this article and may demand compliance with the requirement within thirty days following service on the licensee. The total amount of the bonds or security required of the licensee may not, however, exceed the one million dollars set forth in subsection (a) of this section.

(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 cost of any on-site examination made pursuant to this section, at a rate of fifty dollars for each examiner hour expended, together with all reasonable and necessary travel expenses incurred in connection with the examination.

(c) A person, for the purpose of evading a reporting or record-keeping requirement of 31 U.S.C. Section 5313, or 31 C.F.R. Part 103, or by this article, or a rule adopted 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 record-keeping or reporting requirement of this article, or of a law 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 listed by subsection (c) of this section.

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


(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.

(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 fifteen days after the date of the change.

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

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

(2) The institution of license revocation or suspension procedures against the licensee in any other state;

(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; and

(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.

(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 within fifteen days of 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.

(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.


(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.


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.

(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 West Virginia state police in enforcing this article.


(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. Section 5313 or 31 C.F.R. Part 103, 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 ten thousand dollars for each violation. Each transaction in violation of this article and each day that a violation continues is a separate offense.

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 five thousand dollars for each violation or, in the case of a continuing violation, up to five thousand dollars for each day that the violation continues. A civil penalty assessed may be collected from the bond or deposit required under section ten of this article.


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.


(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.


(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; or

(5) 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.


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.


(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, are confidential and may not be disclosed to the public by the commissioner or employees of the division of banking, 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 herein prevents release to the public of any list of licensees or aggregated financial data for the licensees, prevents disclosure of information the presiding officer deems 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.

§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 show cause why the license should not be revoked, or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall 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 the provisions of section eight of this article, and after ten 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 section ten of this article in full force and effect.

(b) No revocation or suspension of a license under this article is lawful unless prior to institution of proceedings by the commissioner 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 thirty 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, of a copy of 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 shall impair or affect 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.

§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.


(a) A licensee may conduct the business of money transmission and currency exchange regulated by this article at one or more locations in this state through authorized delegates designated by the licensee.

(b) A licensee may not knowingly authorize a person to act as its delegate who has, within the previous ten years,
a disqualifying criminal conviction of the type set forth in subdivision (2), subsection (c), section eight of this article.

(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 twenty-four 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 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, to the commissioner on a quarterly basis, and shall in the report list any new authorized delegate locations 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 with regard to any transaction regulated by this article.


(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.

ARTICLE 3. CHECK CASHING.

§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 one dollar, 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.

§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.

§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.

§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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the ___ day of ___, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/26/48
Time 12:25 pm