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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 4290

**(By Delegates Moore, Campbell,
Azinger and Reynolds)**



Passed March 6, 2014

In effect July 1, 2014.

HB 4290

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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4290

**(BY DELEGATES MOORE, CAMPBELL, AZINGER
AND REYNOLDS)**

[Passed March 6, 2014; in effect July 1, 2014.]

AN ACT to amend and reenact §32A-2-1, §32A-2-3, §32A-2-4, §32A-2-5, §32A-2-8, §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-18, §32A-2-19, §32A-2-22 and §32A-2-27 of the Code of West Virginia, 1931, as amended, relating to licensing and regulation of those engaged in the business of currency exchange, transmission or transport; providing definitions; providing exemptions; clarifying the form of application for license, renewal or required reports; providing that license fees are based upon volume of business; providing minimum surety requirements for licensees; clarifying examination costs; authorizing civil penalties; providing for cease and desist orders; clarifying duties and requirements of delegates designated by a licensee.

Be it enacted by the Legislature of West Virginia:

That §32A-2-1, §32A-2-3, §32A-2-4, §32A-2-5, §32A-2-8, §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-18, §32A-2-19, §32A-2-22 and §32A-2-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 Financial
2 Institutions of this state.

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

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

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

21 (5) "Currency exchange, transportation, transmission
22 business" means a person who is engaging in currency exchange,

23 currency transportation or currency transmission as a service or
24 for profit.

25 (6) "Currency transmission" or "money transmission" means
26 engaging in the business of selling or issuing checks or the
27 business of receiving currency, the payment of money, or other
28 value that substitutes for money by any means for the purpose of
29 transmitting, either prior to or after receipt, that currency,
30 payment of money or other value that substitutes for money by
31 wire, facsimile or other electronic means, or through the use of
32 a financial institution, financial intermediary, the Federal
33 Reserve system or other funds transfer network. It includes the
34 transmission of funds through the issuance and sale of stored
35 value or similar prepaid products' cards which are intended for
36 general acceptance and used in commercial or consumer
37 transactions.

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

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

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

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

53 (11) "Principal" means a licensee's owner, president, senior
54 officer responsible for the licensee's business, chief financial

55 officer or any other person who performs similar functions or
56 who otherwise controls the conduct of the affairs of a licensee.
57 A person controlling ten percent or more of the voting stock of
58 any corporate applicant is a principal under this provision.

§32A-2-3. Exemptions.

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

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

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

10 (3) The United States post office;

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

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

18 (6) Persons engaged solely in the business of currency
19 transportation who operate an armored car service in this state
20 pursuant to licensure under article eighteen, chapter thirty of this
21 code: *Provided*, That the net worth of the licensee exceeds \$5
22 million. The term "armored car service" as used in this article
23 means a service provided by a person transporting or offering to
24 transport, under armed security guard, currency or other things
25 of value in a motor vehicle specially equipped to offer a high

26 degree of security. Persons seeking to claim this exemption shall
27 notify the commissioner of their intent to do so and demonstrate
28 that they qualify for its use. Persons seeking an exemption under
29 this subdivision are not exempt from the provisions of this article
30 if they also engage in currency exchange or currency
31 transmission;

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

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

41 (9) The State Regulatory Registry, LLC, which administers
42 the Nationwide Mortgage Licensing System and Registry on
43 behalf of states and federal banking regulators.

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

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

57 (d) Any person who is required and properly obtains a
58 license under this article to transport currency is exempt from the
59 requirements of article eighteen, chapter thirty of this code.

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

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

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

10 (c) The commissioner shall issue a license if the
11 commissioner finds that the applicant meets the requirements of
12 this article and the rules adopted under this article. The
13 commissioner shall approve or deny every application for an
14 original license within one hundred twenty days from the date a
15 complete application is submitted, unless the commissioner
16 extends the period for good cause. A license is valid for one year
17 from the date the license is issued by the commissioner.

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

27 (e) As a condition for renewal of a license, the licensee must
28 submit to the commissioner an application for renewal on a form

29 prescribed by the commissioner and an annual license renewal
30 fee. The commissioner may direct an applicant to file a license
31 renewal application through the Nationwide Mortgage Licensing
32 System and Registry operated by the State Regulatory Registry,
33 LLC.

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

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

§32A-2-5. Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 **(3) Will conduct its authorized business within the bounds**
36 **of state and federal law, including, but not limited to, section**
37 **1501, article fifteen, chapter thirty-one-d of this code;**

38 **(4) Warrants the trust of the community;**

39 **(5) Has and will maintain a minimum tangible net worth of**
40 **\$50,000 computed according to generally accepted accounting**
41 **principles as shown by the most recent audited financial**
42 **statement filed with and satisfactory to the commissioner, and in**
43 **addition has and will maintain a minimum tangible net worth of**
44 **\$25,000, computed according to generally accepted accounting**
45 **principles for each office or delegate location other than its**

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

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

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

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

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

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

§32A-2-10. Bond.

1 (a) A person who is licensed under this article shall post a
2 bond with a qualified surety company doing business in this state

3 that is acceptable to the commissioner. The bond shall be in the
4 amount of \$100,000 for a licensee which issues or sells checks
5 or money orders, or which engages in currency exchange; or
6 \$300,000 for a licensee which engages in receiving money for
7 transmission by wire, facsimile or electronic transfer, or which
8 engages in currency transportation. A licensee which engages in
9 multiple types of these activities shall post the higher amount. A
10 merchant obtaining a license solely to engage in the check
11 cashing business not incidental to the main business of the
12 merchant as required by article three of this chapter shall post a
13 bond of \$100,000. The bond required by this subsection shall be
14 increased at the time of license renewal by one percent of the
15 annual volume of business the licensee conducts in this state
16 exceeding \$10 million rounded to the nearest thousand, as
17 reported by the licensee: *Provided*, That in no event shall the
18 bond exceed \$1 million.

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

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

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

43 (e) After receiving a license, the licensee shall maintain the
44 required bond until five years after it ceases to do business in
45 this state unless all outstanding checks/payment instruments are
46 cleared or covered by the provisions of article eight, chapter
47 thirty-six of this code pertaining to the distribution of unclaimed
48 property which have become operative and are adhered to by the
49 licensee. Notwithstanding this provision, however, the
50 commissioner may permit the bond to be reduced following
51 cessation of business in the state to the extent the amount of the
52 licensee's checks/payment instruments outstanding in this state
53 are reduced.

54 (f) If the commissioner at any time reasonably determines
55 that the required bond or deposit is insecure, deficient in amount,
56 or exhausted, in whole or in part, he or she may in writing
57 require the filing of a new or supplemental bond in order to
58 secure compliance with this article and may demand compliance
59 with the requirement within thirty days following service on the
60 licensee. The total amount of the bonds required of the licensee
61 may not, however, exceed the \$1 million set forth in subsection
62 (a) of this section.

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

1 (a) Each licensee is subject to a periodic examination of the
2 licensee's business records by the commissioner at the expense
3 of the licensee. For the purpose of carrying out this article, the
4 commissioner may examine all books, records, papers, or other
5 objects that the commissioner determines are necessary for
6 conducting a complete examination and may also examine under
7 oath any person associated with the license holder, including an

8 officer, director, or employee of the licensee or authorized
9 delegate. Unless it will interfere with the commissioner's duties
10 under this article, reasonable notice shall be given to the licensee
11 and any authorized delegate before any on-site examination visit.
12 If a person required by the commissioner to submit to an
13 examination refuses to permit the examination or to answer any
14 question authorized by this article, the commissioner may
15 suspend the person's license until the examination is completed.

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

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

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

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

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

29 (2) Fraudulently structure the transaction.

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

38 than the reporting or record-keeping threshold of a law or rule
39 listed by subsection (c) of this section.

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

§32A-2-13. Notification requirements.

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

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

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

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

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

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

25 (5) Any change in its business activities; and

26 (6) Any change in its principals.

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

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

§32A-2-18. Criminal penalty.

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

3 (1) Violates a requirement of this article;

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

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

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

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

§32A-2-19. Civil penalty.

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

13 (b) In addition to the authority granted in subsection (a) of
14 this section, the commissioner may by administrative assessment
15 impose a civil penalty of up to \$5,000 upon any person he or she
16 believes has violated this article, a rule promulgated under this
17 article, any other law or rule the commissioner is authorized to
18 enforce with respect to persons licensed under this article, or a
19 prior order of the commissioner. For purposes of this subsection,
20 each separate violation is subject to the penalty herein prescribed
21 and, in the case of a continuing violation, a penalty of up to
22 \$5,000 may be assessed for each day the violation continues.
23 Any penalty imposed under this subsection may be contested by
24 the licensee pursuant to article five, chapter twenty-nine-a of this

25 code. A civil penalty assessed under this subsection may be
26 collected from the bond required under section ten of this article.

§32A-2-22. Cease and desist orders.

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

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

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

15 (3) Refused to submit to an examination;

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

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

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

23 (b) The commissioner shall serve notice and a copy of the
24 cease and desist order on the affected party either personally or
25 by certified mail, return receipt requested. Service by mail shall
26 be deemed completed if the notice is deposited in the post office,

27 postage prepaid, addressed to the last known address for a
28 licensee or the person designated by the licensee to accept
29 service in this state.

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

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

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

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

§32A-2-27. Authorized delegates.

1 (a) A licensee may conduct the business of money
2 transmission and currency exchange regulated by this article at
3 one or more locations through authorized delegates designated
4 by the licensee to conduct business on its behalf.

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

9 (c) A licensee shall enter into a contract with its authorized
10 delegate detailing the nature and scope of the relationship

11 between the licensee and the authorized delegate. The contract
12 shall require that the authorized delegate operate in full
13 compliance with the laws of this state and of the United States.
14 The licensee shall, upon request, provide the commissioner with
15 the sample written contract.

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

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

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

42 (g) An authorized delegate shall report to the licensee the
43 theft or loss of payment instruments within twenty-four hours

**44 from the time the authorized delegate knew or should have
45 known of the theft or loss.**

**46 (h) Upon any suspension or revocation of a license, the
47 failure of a licensee to renew a license, or the denial of the
48 renewal of a license, the licensee shall notify its authorized
49 delegates of the event and demand that they immediately cease
50 operations as authorized delegates.**

**51 (i) A licensee shall report the removal of an authorized
52 delegate location, or the termination of operations of an
53 authorized delegate location, to the commissioner on a quarterly
54 basis, and shall in the report list any new authorized delegate
55 locations in this state.**

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

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

Darryl Wells
Chairman, House Committee

Robert F. Hodge
Chairman, Senate Committee

Originating in the House.

In effect July 1, 2014.

Gregory D. Boy
Clerk of the House of Delegates

Joseph W. Minard
Clerk of the Senate

Frank Miller
Speaker of the House of Delegates

Jeffrey V. ...
President of the Senate

FILED
2014 MAR 21 A 10 21
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *21st*
day of *March*, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 3:30 pm