ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 4290

(By Delegates Moore, Campbell, Azinger and Reynolds)

Passed March 6, 2014

In effect July 1, 2014.
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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:


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 Institutions 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. (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, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency, payment of money or other value that substitutes for money by wire, facsimile or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products' cards which are intended for general acceptance and used in commercial or consumer transactions.

(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 or her 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 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.


(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 of the United States;

(3) The United States post office;

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

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

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

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

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

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

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

(c) The issuance and sale of stored value cards or similar prepaid products 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.
(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of article eighteen, chapter thirty of this code.

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

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

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

(c) The commissioner shall issue a license if the commissioner finds that the applicant meets the requirements of this article and the rules adopted under this article. The commissioner shall approve or deny every application for an original license within 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. The commissioner may direct an applicant to file a license renewal application through the Nationwide Mortgage Licensing System and Registry operated by the State Regulatory Registry, LLC.

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

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

§32A-2-5. Fees.

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

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

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

(3) The total of fees required by subdivisions (1) or (2) of this subsection may not exceed $25,000 for any one application.
(4) For a change in address by the licensee of its principal place of business, a fee of $100.

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

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

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

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

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

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

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

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

(A) Has been convicted of a felony or a crime involving fraud, deceit, or moral turpitude under the laws of this state, any other state, or the United States;
(B) Has been convicted of a crime under the laws of another country that involves fraud, deceit, or moral turpitude or would be a felony if committed in the United States; or

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

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

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

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

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

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

(4) Warrants the trust of the community;

(5) Has and will maintain a minimum tangible net worth of $50,000 computed according to generally accepted accounting principles as shown by the most recent audited financial statement filed with and satisfactory to the commissioner, and in addition has and will maintain a minimum tangible net worth of $25,000, computed according to generally accepted accounting principles for each office or delegate location other than its
principal office at which its licensed business is transacted, except that an applicant for a license or renewal of a license may not be required by this article to maintain a tangible net worth of more than $1 million, computed according to generally accepted accounting principles; and

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

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

(1) A felony involving the laundering of money that is the product of or proceeds from criminal activity under chapter 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. §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.


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

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

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

(e) After receiving a license, the licensee shall maintain the required bond until five years after it ceases to do business in this state unless all outstanding 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 bond to be reduced following cessation of business in the state to the extent the amount of the licensee's checks/payment instruments outstanding in this state are reduced.

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


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

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

(c) A person, for the purpose of evading a reporting or
record-keeping requirement of 31 U.S.C. §5313, or 31 C.F.R.
Chapter X, or by this article, or a rule 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 or rule listed by
subsection (c) of this section, including the division of a single
amount of currency into smaller amounts or the conduct of a
transaction or series of transactions in amounts equal to or less
than the reporting or record-keeping threshold of a law or rule listed by subsection (c) of this section.

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


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

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

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

(6) Any change in its 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.

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


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

(1) Violates a requirement of this article;

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

(3) Fraudulently structures or attempts to fraudulently structure a transaction in violation of section eleven of this article.
(b) An offense under this section is a felony.

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


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

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


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

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

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

(3) Refused to submit to an examination;

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

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

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

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

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

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

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

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


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

(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 to act on behalf of the licensee with regard to any
transaction regulated by this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect July 1, 2014.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within we approve this the 21st day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 3:30 pm