

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4290**

4 (By Delegates Moore, Campbell, Azinger
5 and Reynolds)

6 (Originating in the House Committee on Finance)

7
8 [February 18, 2014]

9
10 A BILL to amend and reenact §32A-2-1, §32A-2-3, §32A-2-4, §32A-2-5,
11 §32A-2-8, §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-18, §32A-2-
12 19, §32A-2-22 and §32A-2-27 of the Code of West Virginia,
13 1931, as amended, relating to licensing and regulation of
14 those engaged in the business of currency exchange,
15 transmission or transport; providing definitions; providing
16 exemptions; clarifying the form of application for license,
17 renewal or required reports; providing that license fees are
18 based upon volume of business; providing minimum surety
19 requirements for licensees; clarifying examination costs;
20 authorizing civil penalties; providing for cease and desist
21 orders; clarifying duties and requirements of delegates
22 designated by a licensee.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §32A-2-1, §32A-2-3, §32A-2-4, §32A-2-5, §32A-2-8, §32A-2-

1 10, §32A-2-11, §32A-2-13, §32A-2-18, §32A-2-19, §32A-2-22 and §32A-
2 2-27 of the Code of West Virginia, 1931, as amended, be amended and
3 reenacted to read as follows:

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

6 **§32A-2-1. Definitions.**

7 (1) "Commissioner" means the Commissioner of ~~Banking~~ Financial
8 Institutions of this state.

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

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

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

1 exchange transactions under federal laws and regulations.

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

5 (6) "Currency transmission" or "money transmission" means
6 engaging in the business of selling or issuing checks or the
7 business of receiving currency, ~~or~~ the payment of money, or other
8 value that substitutes for money by any means for the purpose of
9 transmitting, either prior to or after receipt, that currency,
10 payment of money ~~or its equivalent~~ or other value that substitutes
11 for money by wire, facsimile or other electronic means, or through
12 the use of a financial institution, financial intermediary, the
13 Federal Reserve system or other funds transfer network. It
14 includes the transmission of funds through the issuance and sale of
15 stored value or similar prepaid products' cards which are intended
16 for general acceptance and used in commercial or consumer
17 transactions.

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

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

24 (9) "Money order" means any instrument for the transmission or

1 payment of money in relation to which the purchaser or remitter
2 appoints or purports to appoint the seller thereof as his or her
3 agent for the receipt, transmission or handling of money, whether
4 the instrument is signed by the seller, the purchaser or remitter
5 or some other person.

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

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

15 ~~(12) "Securities" means all bonds, debentures or other~~
16 ~~evidences of indebtedness: (a) Issued by the United States of~~
17 ~~America or any agency thereof, or guaranteed by the United States~~
18 ~~of America, or for which the credit of the United States of America~~
19 ~~or any agency thereof is pledged for the payment of the principal~~
20 ~~and interest thereof; and/or (b) which are direct general~~
21 ~~obligations of this state, or any other state if unconditionally~~
22 ~~guaranteed as to the principal and interest by the other state and~~
23 ~~if the other state has the power to levy taxes for the payment of~~
24 ~~the principal and interest thereof and is not in default in the~~

1 ~~payment of any part of the principal or interest owing by it upon~~
2 ~~any part of its funded indebtedness; and/or (c) which are general~~
3 ~~obligations of any county, school district or municipality in this~~
4 ~~state, issued pursuant to law and payable from ad valorem taxes~~
5 ~~levied on all of the taxable property located therein, if the~~
6 ~~county, school district or municipality is not in default in the~~
7 ~~payment of any part of the principal or interest on any debt~~
8 ~~evidenced by its bonds, debentures or other evidences of~~
9 ~~indebtedness.~~

10 **§32A-2-3. Exemptions.**

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

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

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

20 (3) The United States post office;

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

22 (5) The provision of electronic transfer of government
23 benefits for any federal, state or county governmental agency as
24 defined in Federal Reserve Board Regulation E, by a contractor for

1 and on behalf of the United States or any department, agency or
2 instrumentality of the United States or any state or any political
3 subdivisions of a state;

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

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

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

1 and

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

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

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

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

21 **§32A-2-4. License application, issuance, and renewal.**

22 (a) An applicant for a license shall submit an application to
23 the commissioner on a form prescribed by the commissioner. The
24 commissioner may direct an applicant to file a license application

1 through the Nationwide Mortgage Licensing System and Registry
2 operated by the State Regulatory Registry, LLC.

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

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

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

24 (e) As a condition for renewal of a license, the licensee must

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

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

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

15 **§32A-2-5. Fees.**

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

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

1 (2) For renewal of a license, a fee of \$250 plus ~~\$20~~ \$5 for
2 each location ~~within the state~~ at which the licensee and its
3 authorized delegates are conducting business or propose to conduct
4 business excepting the applicant's principal place of business,
5 plus an assessment of up to \$.001 for every dollar of transmission
6 services provided in the prior year.

7 (3) The total of fees required by subdivisions (1) or (2) of
8 this subsection may not exceed ~~\$10,000~~ \$25,000 for any one
9 application.

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

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

17 (b) ~~Beginning one year after the effective date of this~~
18 ~~article,~~ The commissioner may, by rules proposed for legislative
19 approval in accordance with the provisions of article three,
20 chapter twenty-nine-a of this code, amend the fees set forth in
21 this section and in subsection (b), section eleven of this article.

22 (c) Fees and moneys received and collected under this article
23 shall be paid into the special revenue account in the State
24 Treasury for the Division of ~~Banking~~ Financial Institutions

1 established in section eight, article two, chapter thirty-one-a of
2 this code.

3 **§32A-2-8. Qualifications for license or renewal of license.**

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

8 (b) An applicant for a license shall agree in writing to
9 comply with the currency reporting and record-keeping requirements
10 of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R. ~~Part~~
11 ~~103~~ Chapter X and any other relevant federal law.

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

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

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

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

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

24 (2) The person, a principal of the person, or the spouse of

1 the person or a principal of the person has been convicted of an
2 offense under a state or federal law relating to drug trafficking,
3 money laundering, or a reporting requirement of the Bank Secrecy
4 Act (~~Pub. L. 91-508~~), 12 U.S.C. § 1951 et seq., as amended.

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

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

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

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

18 (4) Warrants the trust of the community;

19 (5) Has and will maintain a minimum tangible net worth of
20 \$50,000 computed according to generally accepted accounting
21 principles as shown by the most recent audited financial statement
22 filed with and satisfactory to the commissioner, and in addition
23 has and will maintain a minimum tangible net worth of \$25,000,
24 computed according to generally accepted accounting principles for

1 each office or delegate location ~~in the state~~ other than its
2 principal office at which its licensed business is transacted,
3 except that an applicant for a license or renewal of a license may
4 not be required by this article to maintain a tangible net worth of
5 more than \$1 million, computed according to generally accepted
6 accounting principles; and

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

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

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

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

20 (f) Before approving an application for a license of an
21 applicant who has less than one year's experience in the proposed
22 business governed by this article as a regulated entity in another
23 state, or whose license has been suspended or revoked by another
24 state, the commissioner may, in his or her discretion, conduct an

1 on-site investigation of an applicant at the sole expense of the
2 applicant and may require the applicant to pay a nonrefundable
3 payment of the anticipated expenses for conducting the
4 investigation. Failure to make the payment or cooperate with the
5 investigation is grounds for denying the application.

6 **§32A-2-10. Bond.**

7 (a) A person who is licensed under this article shall post a
8 bond with a qualified surety company doing business in this state
9 that is acceptable to the commissioner. The bond shall be in the
10 amount of \$100,000 for a licensee which issues or sells checks or
11 money orders, or which engages in currency exchange; or \$300,000
12 for a licensee which engages in receiving money for transmission by
13 wire, facsimile or electronic transfer, or which engages in
14 currency transportation. A licensee which engages in multiple
15 types of these activities shall post the higher amount. A merchant
16 obtaining a license solely to engage in the check cashing business
17 not incidental to the main business of the merchant as required by
18 article three of this chapter shall post a bond of \$100,000. ~~The~~
19 ~~amount of the surety bond will be increased by \$25,000 per licensee~~
20 ~~location or authorized delegate in the state, but in no event to~~
21 ~~exceed \$1 million.~~ The bond required by this subsection shall be
22 increased at the time of license renewal by one percent of the
23 annual volume of business the licensee conducts in this state
24 exceeding \$10 million rounded to the nearest thousand, as reported

1 by the licensee: *Provided*, That in no event shall the bond exceed
2 \$1 million.

3 ~~(b) Instead of the bond required under subsection (a) of this~~
4 ~~section, a licensee, with the prior written permission of the~~
5 ~~commissioner, may deposit with the commissioner or a~~
6 ~~federally-insured depository institution in this state designated~~
7 ~~by the licensee and approved for that purpose by the commissioner,~~
8 ~~United States currency or cash equivalent instruments or securities~~
9 ~~acceptable to the commissioner. The amount of currency or the fair~~
10 ~~market value of the instruments or securities shall be an amount~~
11 ~~equal to or exceeding the amount required for the bond under~~
12 ~~subsection (a) of this section. When securities are deposited as~~
13 ~~aforesaid, the value of the securities shall at all times be equal~~
14 ~~to the amount of bond otherwise required, computed on the basis of~~
15 ~~the principal amount or the market value thereof, whichever is~~
16 ~~lower. No cash deposit or pledge of cash equivalent in instruments~~
17 ~~or securities may be accepted in lieu of the bond required by~~
18 ~~subsection (a) of this section, unless such alternative deposit or~~
19 ~~pledge was in effect prior to April 1, 2014.~~

20 (c) A bond posted by a licensee shall be conditioned upon
21 compliance with the provisions of this article and any rules
22 thereunder for as long as the person holds the license. The
23 deposit or bond, as the case may be, shall be made to the State of
24 West Virginia for the benefit and protection of any claimant

1 against the applicant or licensee with respect to the receipt,
2 handling, transmission, and payment of money by the licensee or
3 authorized delegate in connection with the licensed operations in
4 this state. A claimant damaged by a breach of the conditions of
5 the bond or deposit shall, upon the assent of the commissioner,
6 have a right of action against the bond or deposit for damages
7 suffered thereby and may bring suit directly thereon, or the
8 commissioner may bring suit on behalf of the claimant. The
9 aggregate liability of the surety in no event shall exceed the
10 principal sum of the bond. ~~So long as the person making a deposit~~
11 ~~under this section is not in violation of any of the provisions of~~
12 ~~this article, that person is permitted to receive all interest and~~
13 ~~dividends on the deposit, and shall have the right, with the~~
14 ~~approval of the commissioner, to substitute other securities. If~~
15 ~~the deposit is made at a bank, any custodial fees therefor shall be~~
16 ~~paid by the person making the deposit.~~

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

22 (e) After receiving a license, the licensee shall maintain the
23 required bond ~~or securities~~ until five years after it ceases to do
24 business in this state unless all outstanding checks/payment

1 instruments are cleared or covered by the provisions of article
2 eight, chapter thirty-six of this code pertaining to the
3 distribution of unclaimed property which have become operative and
4 are adhered to by the licensee. Notwithstanding this provision,
5 however, the commissioner may permit the ~~security~~ bond to be
6 reduced following cessation of business in the state to the extent
7 the amount of the licensee's checks/payment instruments outstanding
8 in this state are reduced.

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

18 **§32A-2-11. Examination and fraudulently structured transactions.**

19 (a) Each licensee is subject to a periodic examination of the
20 licensee's business records by the commissioner at the expense of
21 the licensee. For the purpose of carrying out this article, the
22 commissioner may examine all books, records, papers, or other
23 objects that the commissioner determines are necessary for
24 conducting a complete examination and may also examine under oath

1 any person associated with the license holder, including an
2 officer, director, or employee of the licensee or authorized
3 delegate. Unless it will interfere with the commissioner's duties
4 under this article, reasonable notice shall be given to the
5 licensee and any authorized delegate before any on-site examination
6 visit. If a person required by the commissioner to submit to an
7 examination refuses to permit the examination or to answer any
8 question authorized by this article, the commissioner may suspend
9 the person's license until the examination is completed.

10 (b) The licensee shall bear the reasonable and necessary per
11 diem and travel expense cost of any on-site examination made
12 pursuant to this section. ~~at a rate of \$50 for each examiner hour~~
13 ~~expended, together with all reasonable and necessary travel~~
14 ~~expenses incurred in connection with the examination.~~

15 (c) A person, for the purpose of evading a reporting or
16 record-keeping requirement of 31 U.S.C. §5313, or 31 C.F.R. ~~Part~~
17 ~~103~~ Chapter X, or by this article, or a rule adopted under this
18 article, may not with respect to a transaction with a licensee:

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

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

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

1 (2) Fraudulently structure the transaction.

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

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

15 **§32A-2-13. Notification requirements.**

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

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

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

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

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

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

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

17 (6) Any change in its principals.

18 (c) A licensee shall notify the commissioner of any merger or
19 acquisition which may result in a change of control or a change in
20 principals of a licensee within fifteen days of announcement or
21 publication of the proposal, or its occurrence, whichever is
22 earlier. Upon notice of these circumstances by a corporate
23 licensee, the commissioner may require all information necessary to
24 determine whether it results in a transfer or assignment of the

1 license and thus if a new application is required in order for the
2 company to continue doing business under this article. A licensee
3 that is an entity other than a corporation shall in these
4 circumstances submit a new application for licensure at the time of
5 notice.

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

12 **§32A-2-18. Criminal penalty.**

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

15 (1) Violates a requirement of this article;

16 (2) Makes a false, fictitious, or fraudulent statement,
17 representation, or entry in a record or report required under 31
18 U.S.C. §5313 or 31 C.F.R. ~~Part 103~~ Chapter X, or by this article,
19 or a rule adopted under this article; or

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

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

24 (c) Any officer, director, employee or agent of any licensee

1 or any other person guilty of any felony offense as provided in
2 this section shall, upon conviction thereof, be imprisoned in the
3 penitentiary not less than one nor more than five years and also,
4 in the discretion of the court, may be fined up to \$10,000 for each
5 violation. Each transaction in violation of this article and each
6 day that a violation continues is a separate offense.

7 **§32A-2-19. Civil penalty.**

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

20 (b) In addition to the authority granted in subsection (a) of
21 this section, the commissioner may by administrative assessment
22 impose a civil penalty of up to \$5,000 upon any person he or she
23 believes has violated this article, a rule promulgated under this
24 article, any other law or rule the commissioner is authorized to

1 enforce with respect to persons licensed under this article, or a
2 prior order of the commissioner. For purposes of this subsection,
3 each separate violation is subject to the penalty herein prescribed
4 and, in the case of a continuing violation, a penalty of up to
5 \$5,000 may be assessed for each day the violation continues. Any
6 penalty imposed under this subsection may be contested by the
7 licensee pursuant to article five, chapter twenty-nine-a of this
8 code. A civil penalty assessed under this subsection may be
9 collected from the bond required under section ten of this article.

10 **§32A-2-22. Cease and desist orders.**

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

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

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

1 (3) Refused to submit to an examination;

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

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

6 ~~(5)~~ (6) Violated any condition of its license or of any
7 agreement entered into with the commissioner.

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

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

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

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

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

7 **§32A-2-27. Authorized delegates.**

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

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

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

23 (d) The financial responsibility of a licensee for the actions
24 of its authorized delegate shall not exceed the amount of funds

1 received by the authorized delegate on behalf of its licensee for
2 the business regulated under this article.

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

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

1 (g) An authorized delegate shall report to the licensee the
2 theft or loss of payment instruments within twenty-four hours from
3 the time the authorized delegate knew or should have known of the
4 theft or loss.

5 (h) Upon any suspension or revocation of a license, the
6 failure of a licensee to renew a license, or the denial of the
7 renewal of a license, the licensee shall notify its authorized
8 delegates of the event and demand that they immediately cease
9 operations as authorized delegates.

10 (i) A licensee shall report the removal of an authorized
11 delegate location, or the termination of operations of an
12 authorized delegate location, to the commissioner on a quarterly
13 basis, and shall in the report list any new authorized delegate
14 locations in this state.

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