

Senate Bill No. 438

(By Senators Tucker, McCabe, Palumbo and Plymale)

[Introduced January 27, 2014; referred to the Committee on
Banking and Insurance; and then to the Committee on Government
Organization.]

A BILL 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, all relating to definitions for
"commissioner", "currency transmission" and "money
transmission"; providing an exemption from licensing for the
State Regulatory Registry, LLC; providing that the authorized
delegate of a licensee may only conduct business on behalf of
the licensee and may not have subdelegates; authorizing the
commissioner to require use of the Nationwide Mortgage
Licensing System and Registry for license applications and
renewals; reducing the renewal fee for a delegate from \$20 to
\$5; adding an assessment of \$.001 for every dollar of

1 transmission services provided in the prior year; raising the
2 cap on fees to \$25,000; correcting citations to federal
3 regulations and laws; requiring that tangible net worth be
4 required of licensees; eliminating the need for a delegate to
5 be located in this state; amending the bond required of
6 licensees by replacing the increase for each delegate location
7 with the ability to increase the bond by one percent of the
8 annual volume of business in this state exceeding \$10 million
9 while retaining the existing bond cap of \$1 million;
10 eliminating the ability to provide a cash deposit or pledge of
11 securities in lieu of a surety bond while allowing for the
12 continuation of any cash deposit or pledge in existence prior
13 to April 1, 2014; eliminating the charge of \$50 per hour of
14 examination time; requiring a licensee to report to the
15 commissioner any enforcement action taken against the licensee
16 by another state or federal regulator and any change in the
17 licensee's business activities or principals; authorizing the
18 commissioner to assess an administrative penalty of up to
19 \$5,000 for a violation of this article and providing that in
20 the case of a continuing violation a penalty may be assessed
21 for each day the violation continues and that any penalty
22 imposed is subject to appeal and judicial review under chapter
23 twenty-nine-a, article five of this code; authorizing the

1 commissioner to issue a cease-and-desist order for any
2 violation of federal law or regulation pertaining to the
3 business of currency exchange, money transportation or
4 transmission or check cashing.

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

6 That §32A-2-1, §32A-2-3, §32A-2-4, §32A-2-5, §32A-2-8,
7 §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-18, §32A-2-19, §32A-2-22
8 and §32A-2-27 of the Code of West Virginia, 1931, as amended, be
9 amended and reenacted, all to read as follows:

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

12 **§32A-2-1. Definitions.**

13 (1) "Commissioner" means the Commissioner of ~~Banking~~ Financial
14 Institutions of this state.

15 (2) "Check" or "payment instrument" means any check,
16 traveler's check, draft, money order or other instrument for the
17 transmission or payment of money whether or not the instrument is
18 negotiable. The term does not include a credit card voucher, a
19 letter of credit or any instrument that is redeemable by the issuer
20 in goods or services.

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

23 (4) "Currency exchange" means the conversion of the currency

1 of one government into the currency of another government, but does
2 not include the issuance and sale of travelers checks denominated
3 in a foreign currency. Transactions involving the electronic
4 transmission of funds by licensed money transmitters which may
5 permit, but do not require, the recipient to obtain the funds in a
6 foreign currency outside of West Virginia are not currency exchange
7 transactions: *Provided*, That they are not reportable as currency
8 exchange transactions under federal laws and regulations.

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

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

1 transactions.

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

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

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

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

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

23 ~~(12) "Securities" means all bonds, debentures or other~~

~~1 evidences of indebtedness: (a) Issued by the United States of
2 America or any agency thereof, or guaranteed by the United States
3 of America, or for which the credit of the United States of America
4 or any agency thereof is pledged for the payment of the principal
5 and interest thereof; and/or (b) which are direct general
6 obligations of this state, or any other state if unconditionally
7 guaranteed as to the principal and interest by the other state and
8 if the other state has the power to levy taxes for the payment of
9 the principal and interest thereof and is not in default in the
10 payment of any part of the principal or interest owing by it upon
11 any part of its funded indebtedness; and/or (c) which are general
12 obligations of any county, school district or municipality in this
13 state, issued pursuant to law and payable from ad valorem taxes
14 levied on all of the taxable property located therein, if the
15 county, school district or municipality is not in default in the
16 payment of any part of the principal or interest on any debt
17 evidenced by its bonds, debentures or other evidences of
18 indebtedness.~~

19 **§32A-2-3. Exemptions.**

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

22 (1) Banks, trust companies, foreign bank agencies, credit
23 unions, savings banks and savings and loan associations authorized

1 to do business in the state or which qualify as federally insured
2 depository institutions, whether organized under the laws of this
3 state, any other state or the United States;

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

6 (3) The United States post office;

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

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

14 (6) Persons engaged solely in the business of currency
15 transportation who operate an armored car service in this state
16 pursuant to licensure under article eighteen, chapter thirty of
17 this code: *Provided*, That the net worth of the licensee exceeds \$5
18 million. The term "armored car service" as used in this article
19 means a service provided by a person transporting or offering to
20 transport, under armed security guard, currency or other things of
21 value in a motor vehicle specially equipped to offer a high degree
22 of security. Persons seeking to claim this exemption shall notify
23 the commissioner of their intent to do so and demonstrate that they

1 qualify for its use. Persons seeking an exemption under this
2 subdivision are not exempt from the provisions of this article if
3 they also engage in currency exchange or currency transmission;

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

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

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

21 (c) The issuance and sale of stored value cards or similar
22 prepaid products which are intended to purchase items only from the
23 issuer or seller of the stored value card is exempt from the

1 provisions of this article.

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

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

8 **§32A-2-4. License application, issuance, and renewal.**

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

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

18 (c) The commissioner shall issue a license if the commissioner
19 finds that the applicant meets the requirements of this article and
20 the rules adopted under this article. The commissioner shall
21 approve or deny every application for an original license within
22 one hundred twenty days from the date a complete application is
23 submitted, unless the commissioner extends the period for good

1 cause. A license is valid for one year from the date the license
2 is issued by the commissioner.

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

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

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

20 (g) An applicant for a license who is not located in this
21 state shall file an irrevocable consent, duly acknowledged, that
22 suits and actions may be commenced against the applicant in the
23 courts of this state by service of process upon a person located

1 within the state designated to accept service, or by service upon
2 the Secretary of State, as well as by service as set forth in this
3 chapter.

4 **§32A-2-5. Fees.**

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

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

14 (2) For renewal of a license, a fee of \$250 plus ~~\$20~~ \$25 for
15 each location ~~within the state~~ at which the licensee and its
16 authorized delegates are conducting business or propose to conduct
17 business excepting the applicant's principal place of business,
18 plus an assessment of \$.001 for every dollar of transmission
19 services provided in the prior year.

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

23 (4) For a change in address by the licensee of its principal

1 place of business, a fee of \$100.

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

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

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

17 **§32A-2-8. Qualifications for license or renewal of license.**

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

22 (b) An applicant for a license shall agree in writing to
23 comply with the currency reporting and record-keeping requirements

1 of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R. ~~Part~~
2 ~~103~~ Chapter X and any other relevant federal law.

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

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

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

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

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

15 (2) The person, a principal of the person, or the spouse of
16 the person or a principal of the person has been convicted of an
17 offense under a state or federal law relating to drug trafficking,
18 money laundering, or a reporting requirement of the Bank Secrecy
19 Act (~~Pub. L. 91-508~~) as amended.

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

22 (1) Has recklessly failed to file or evaded the obligation to
23 file a currency transaction report as required by 31 U.S.C. §5313

1 during the previous three years;

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

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

9 (4) Warrants the trust of the community;

10 (5) Has and will maintain a minimum tangible net worth of
11 \$50,000 computed according to generally accepted accounting
12 principles as shown by the most recent audited financial statement
13 filed with and satisfactory to the commissioner, and in addition
14 has and will maintain a minimum tangible net worth of \$25,000,
15 computed according to generally accepted accounting principles for
16 each office or delegate location ~~in the state~~ other than its
17 principal office at which its licensed business is transacted,
18 except that an applicant for a license or renewal of a license may
19 not be required by this article to maintain a tangible net worth of
20 more than \$1 million, computed according to generally accepted
21 accounting principles; and

22 (6) Does not owe delinquent taxes, fines, or fees to any local
23 or state taxing authority or governmental agency, department, or

1 other political subdivision of this state.

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

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

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

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

22 **§32A-2-10. Bond.**

23 (a) A person who is licensed under this article shall post a

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

22 (b) ~~Instead of the bond required under subsection (a) of this~~
23 ~~section, a licensee, with the prior written permission of the~~

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

16 (c) A bond posted by a licensee shall be conditioned upon
17 compliance with the provisions of this article and any rules
18 thereunder for as long as the person holds the license. The
19 deposit or bond, as the case may be, shall be made to the State of
20 West Virginia for the benefit and protection of any claimant
21 against the applicant or licensee with respect to the receipt,
22 handling, transmission, and payment of money by the licensee or
23 authorized delegate in connection with the licensed operations in

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

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

19 (e) After receiving a license, the licensee shall maintain the
20 required bond ~~or securities~~ until five years after it ceases to do
21 business in this state unless all outstanding checks/payment
22 instruments are cleared or covered by the provisions of article
23 eight, chapter thirty-six of this code pertaining to the

1 distribution of unclaimed property which have become operative and
2 are adhered to by the licensee. Notwithstanding this provision,
3 however, the commissioner may permit the ~~security~~ bond to be
4 reduced following cessation of business in the state to the extent
5 the amount of the licensee's checks/payment instruments outstanding
6 in this state are reduced.

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

16 **§32A-2-11. Examination and fraudulently structured transactions.**

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

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

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

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

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

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

21 (B) Maintain a record or file a report required by a law
22 listed by this subsection that contains a material omission or
23 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

1 bankruptcy laws;

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

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

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

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

18 (6) Any change in its principals.

19 (c) A licensee shall notify the commissioner of any merger or
20 acquisition which may result in a change of control or a change in
21 principals of a licensee within fifteen days of announcement or
22 publication of the proposal, or its occurrence, whichever is
23 earlier. Upon notice of these circumstances by a corporate

1 licensee, the commissioner may require all information necessary to
2 determine whether it results in a transfer or assignment of the
3 license and thus if a new application is required in order for the
4 company to continue doing business under this article. A licensee
5 that is an entity other than a corporation shall in these
6 circumstances submit a new application for licensure at the time of
7 notice.

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

14 **§32A-2-18. Criminal penalty.**

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

17 (1) Violates a requirement of this article;

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

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

1 article.

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

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

10 **§32A-2-19. Civil penalty.**

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

23 (b) In addition to the authority granted in subsection (a) of

1 this section, the commissioner may by administrative assessment
2 impose a civil penalty of up to \$5,000 upon any person he or she
3 believes has violated this article, a rule promulgated under this
4 article, any other law or rule the commissioner is authorized to
5 enforce with respect to persons licensed under this article, or a
6 prior order of the commissioner. For the purposes of this
7 subsection, each separate violation is subject to the penalty
8 herein prescribed and, in the case of a continuing violation, a
9 penalty of up to \$5,000 may be assessed for each day the violation
10 continues. Any penalty imposed under this subsection may be
11 contested by the licensee pursuant to article five, chapter
12 twenty-nine-a of this code. A civil penalty assessed under this
13 subsection may be collected from the bond required under section
14 ten of this article.

15 **§32A-2-22. Cease and desist orders.**

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

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

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

7 (3) Refused to submit to an examination;

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

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

12 ~~(5)~~ (6) Violated any condition of its license or of any
13 agreement entered into with the commissioner.

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

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

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

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

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

14 **§32A-2-27. Authorized delegates.**

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

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

23 (c) A licensee shall enter into a contract with its authorized

1 delegate detailing the nature and scope of the relationship between
2 the licensee and the authorized delegate. The contract shall
3 require that the authorized delegate operate in full compliance
4 with the laws of this state and of the United States. The licensee
5 shall, upon request, provide the commissioner with the sample
6 written contract.

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

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

18 (f) The licensee shall require the authorized delegate to hold
19 in trust for the licensee from the moment of receipt of the
20 proceeds of any business transacted under this article in an amount
21 equal to the amount of proceeds due the licensee less the amount
22 due the authorized delegate. The funds shall remain the property
23 of the licensee whether or not commingled by the authorized

1 delegate with its own funds. In the event that the license is
2 revoked by the commissioner, all proceeds held in trust by the
3 authorized delegate of that licensee are considered to be assigned
4 to the commissioner. If an authorized delegate fails to remit
5 funds to the licensee in accordance with the time specified in the
6 contract with the licensee, the licensee may bring a civil action
7 against the authorized delegate for three times the actual damages.
8 The commissioner may by rule set a maximum remittance time for
9 authorized delegates.

10 (g) An authorized delegate shall report to the licensee the
11 theft or loss of payment instruments within twenty-four hours from
12 the time the authorized delegate knew or should have known of the
13 theft or loss.

14 (h) Upon any suspension or revocation of a license, the
15 failure of a licensee to renew a license, or the denial of the
16 renewal of a license, the licensee shall notify its authorized
17 delegates of the event and demand that they immediately cease
18 operations as authorized delegates.

19 (I) A licensee shall report the removal of an authorized
20 delegate location, or the termination of operations of an
21 authorized delegate location, to the commissioner on a quarterly
22 basis, and shall in the report list any new authorized delegate
23 locations in this state.

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

NOTE: The purpose of this bill is to revise the regulatory structure of money transmitters and other entities licensed under this law, providing for a fairer bond amount, assessment and fee structure based upon volume of business conducted, revising the reporting requirements for licensees, authorizing the commissioner to use the Nationwide Mortgage Licensing System and Registry (NMLSR) for filing license applications and renewals, providing a licensing exemption for the entity that operates the NMLSR, authorizing the commissioner to impose a civil administrative penalty for violations of this article, and clarifying that authorized delegates of licenses may not have sub-delegates and may only conduct business on behalf of the authorizing licensee.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.