



SPONSOR: Sen. Mantzavinos & Sen. Pettyjohn & Rep. Bush &  
Rep. Spiegelman

DELAWARE STATE SENATE  
153rd GENERAL ASSEMBLY

SENATE BILL NO. 18

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO MONEY TRANSMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Chapter 23, Title 5 of the Delaware Code is hereby repealed in its entirety.

2 Section 2. Amend Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as  
3 shown by underling as follows and by redesignating accordingly:

4 Chapter 23. Money Transmission and Virtual Currency

5 Subchapter I. General Provisions

6 § 2301. Title.

7 This chapter may be cited as the "Delaware Money Transmission and Virtual Currency Modernization Act."

8 § 2302. Purpose.

9 It is the intent and purpose of the General Assembly that the provisions of this chapter accomplish the following:

10 (1) Ensure states can coordinate in all areas of regulation, licensing, and supervision to eliminate  
11 unnecessary regulatory burden and more effectively utilize regulator resources.

12 (2) Protect the public from financial crime.

13 (3) Standardize the types of activities that are subject to licensing or otherwise exempt from licensing.

14 (4) Modernize safety and soundness requirements to ensure customer funds are protected in an  
15 environment that supports innovative and competitive business practices.

16 § 2303. Definitions.

17 As used in this chapter:

18 (1) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring  
19 control of a licensee whether or not pursuant to an express agreement.

20 (2) "Authorized delegate" means a person a licensee designates to engage in money transmission on  
21 behalf of the licensee.

22           (3) "Average daily money transmission liability" means the amount of the licensee's outstanding money  
23 transmission obligations in this State at the end of each day in a given period of time, added together, and divided  
24 by the total number of days in the given period of time. For purposes of calculating average daily money  
25 transmission liability under this chapter for any licensee required to do so, the given period of time shall be the  
26 quarters ending March 31, June 30, September 30, and December 31.

27           (4) "Bank Secrecy Act" means the Bank Secrecy Act, 31 U.S.C. § 5311, et seq. and its implementing  
28 regulations, as amended and recodified from time to time.

29           (5) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or  
30 services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent  
31 required by applicable law to be redeemable in cash for its cash value.

32           (6) "Commissioner" means the State Bank Commissioner.

33           (7) "Control" means any of the following:

34                   a. The power to vote, directly or indirectly, at least 25% of the outstanding voting shares or  
35 voting interests of a licensee or person in control of a licensee.

36                   b. The power to elect or appoint a majority of key individuals or executive officers, managers,  
37 directors, trustees, or other persons exercising managerial authority of a person in control of a licensee.

38                   c. The power to exercise, directly or indirectly, a controlling influence over the management or  
39 policies of a licensee or person in control of a licensee.

40           (8) "Eligible rating" means a credit rating of any of the three highest rating categories provided by an  
41 eligible rating service, whereby each category may include rating category modifiers such as "plus" or "minus"  
42 for S&P, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the  
43 rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit  
44 ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any  
45 other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating shall  
46 apply when determining whether a security bears an eligible rating.

47           (9) "Eligible rating service" means any Nationally Recognized Statistical Rating Organization (NRSRO)  
48 as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the  
49 Commissioner by rule or order.

50           (10) "Federally insured depository financial institution" means a bank, credit union, savings and loan  
51 association, trust company, savings association, savings bank, industrial bank, or industrial loan company

52 organized under the laws of the United States or any state of the United States, when such bank, credit union,  
53 savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan  
54 company has federally insured deposits.

55 (11) "In this State" means at a physical location within this state for a transaction requested in person. For  
56 a transaction requested electronically or by phone, the provider of money transmission may determine if the person  
57 requesting the transaction is "in this State" by relying on other information provided by the person regarding the  
58 location of the individual's residential address or a business entity's principal place of business or other physical  
59 address location, and any records associated with the person that the provider of money transmission may have  
60 that indicate such location, including but not limited to an address associated with an account.

61 (12) "Individual" means a natural person.

62 (13) "Key individual" means any individual ultimately responsible for establishing or directing policies  
63 and procedures of the licensee, such as an executive officer, manager, director, or trustee.

64 (14) "Licensee" means a person licensed under this chapter.

65 (15) "Material litigation" means litigation, that according to United States generally accepted accounting  
66 principles, is significant to a person's financial health and would be required to be disclosed in the person's annual  
67 audited financial statements, report to shareholders, or similar records.

68 (16) "Money" means a medium of exchange that is authorized or adopted by the United States or a  
69 foreign government. The term includes a monetary unit of account established by an intergovernmental  
70 organization or by agreement between two or more governments.

71 (17) "Monetary value" means a medium of exchange, whether or not redeemable in money.

72 (18) a. "Money transmission" means any of the following:

73 1. Selling or issuing payment instruments to a person located in this State.

74 2. Selling or issuing stored value to a person located in this State.

75 3. Receiving money for transmission from a person located in this State.

76 b. "Money transmission" includes payroll processing services.

77 c. "Money transmission" does not include the provision solely of online or telecommunications  
78 services or network access.

79 (19) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank  
80 Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

81                   (20) "Multistate licensing process" means any agreement entered into by and among state regulators  
82 relating to coordinated processing of applications for money transmission licenses, applications for the acquisition  
83 of control of a licensee, control determinations, or notice and information requirements for a change of key  
84 individuals.

85                   (21) "NMLS" means the Nationwide Multistate Licensing System and Registry developed by the  
86 Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and  
87 owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing  
88 and registration of persons in financial services industries.

89                   (22) a. "Outstanding money transmission obligations" means any of the following:

90                                 1. Any payment instrument or stored value issued or sold by the licensee to a person  
91 located in the United States or reported as sold by an authorized delegate of the licensee to a  
92 person that is located in the United States that has not yet been paid or refunded by or for the  
93 licensee, or escheated in accordance with applicable abandoned property laws.

94                                 2. Any money received for transmission by the licensee or an authorized delegate in the  
95 United States from a person located in the United States that has not been received by the payee  
96 or refunded to the sender, or escheated in accordance with applicable abandoned property laws.

97                                 b. For purposes of paragraph (22)a. of this section, "in the United States" includes, to the extent  
98 applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the  
99 Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country.

100                   (23) "Passive investor" means any of the following:

101                                 a. A person that does not have the power to elect a majority of key individuals or executive  
102 officers, managers, directors, trustees, or other persons exercising managerial authority of a person in  
103 control of a licensee.

104                                 b. A person that is not employed by and does not have any managerial duties of the licensee or  
105 person in control of a licensee.

106                                 c. A person that does not have the power to exercise, directly or indirectly, a controlling  
107 influence over the management or policies of a licensee or person in control of a licensee and does one of  
108 the following:

109   1. Attests to paragraphs (23)a. through c. of this section in a form and in a medium  
110 prescribed by the Commissioner.

111                   2. Commits to the passivity characteristics of paragraphs (23)a. through c. of this  
112                   section, in a written document.

113                   (24) a. “Payment instrument” means a written or electronic check, draft, money order, traveler's check, or  
114                   other written or electronic instrument for the transmission or payment of money or monetary value, whether or not  
115                   negotiable.

116                   b. “Payment instrument” does not include stored value or any instrument that is any of the  
117                   following:

118                             1. Redeemable by the issuer only for goods or services provided by the issuer or its  
119                             affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable  
120                             law to be redeemable in cash for its cash value.

121                             2. Sold to the public but issued and distributed as part of a loyalty, rewards, or  
122                             promotional program.

123                   (25) a. “Payroll processing services” means receiving money for transmission pursuant to a contract with  
124                   a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments  
125                   relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries.

126                   b. “Payroll processing services” does not include an employer performing payroll processing  
127                   services on its own behalf on behalf of its affiliate, or a professional employment organization subject to  
128                   regulation under other applicable state law.

129                   (26) “Person” means any individual, general partnership, limited partnership, limited liability company,  
130                   corporation, trust, association, joint stock corporation, or other corporate entity identified by the Commissioner.

131                   (27) “Receiving money for transmission” or “money received for transmission” means receiving money  
132                   or monetary value in the United States for transmission within or outside the United States by electronic or other  
133                   means.

134                   (28) “Remit” means to make direct payments of money to a licensee or its representative authorized to  
135                   receive money or to deposit money in a bank in an account specified by the licensee.

136                   (29) a. “Stored value” means monetary value representing a claim against the issuer evidenced by an  
137                   electronic or digital record, and that is intended and accepted for use as a means of redemption for money or  
138                   monetary value, or payment for goods or services. “Stored value” includes “prepaid access” as defined by 31  
139                   C.F.R. § 1010.100, as amended or recodified from time to time.

140                    b. The term "stored value" does not include a payment instrument or closed loop stored value, or  
141                    stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional  
142                    program.

143                    (30) "Streamlined acquisition of control" means a specialized, accelerated regulatory process that allows  
144                    a person or entity to acquire control of a regulated business without undergoing the full, standard application and  
145                    review procedures, provided that person or entity meets specific eligibility criteria, such as having previously  
146                    complied with the regulatory authority.

147                    (31) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less  
148                    liabilities, as determined in accordance with United States generally accepted accounting principles.

149                    Subchapter II. Licensing

150                    § 2304. License required.

151                    (a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as  
152                    providing money transmission unless the person is licensed under this chapter.

153                    (b) Subsection (a) of this section does not apply to the following:

154                    (1) A person that is an authorized delegate of a person licensed under this chapter acting within the scope  
155                    of authority conferred by a written contract with the licensee.

156                    (2) A person that is exempt under § 2305 of this title and does not engage in money transmission  
157                    outside the scope of such exemption.

158                    (c) A license issued under this chapter is not transferable or assignable.

159                    § 2305. Exemptions.

160                    (a) This chapter does not apply to any of the following:

161                    (1) An operator of a payment system to the extent that it provides processing, clearing, or settlement  
162                    services, between or among persons exempted by this section or licensees, in connection with wire transfers, credit  
163                    card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar  
164                    funds transfers.

165                    (2) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee  
166                    for goods or services, other than money transmission itself, provided to the payor by the payee, provided that all of  
167                    the following requirements are satisfied:

168                    a. There exists a written agreement between the payee and the agent directing the agent to collect  
169                    and process payments from payors on the payee's behalf.

170 b. The payee holds the agent out to the public as accepting payments for goods or services on the  
171 payee's behalf.

172 c. Payment for the goods and services is treated as received by the payee upon receipt by the  
173 agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent  
174 fails to remit the funds to the payee.

175 (3) A person that acts as an intermediary by processing payments between an entity that has directly  
176 incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided  
177 that the entity does all of the following:

178 a. Is properly licensed or exempt from licensing requirements under this chapter.

179 b. Provides a receipt, electronic record, or other written confirmation to the sender identifying  
180 the entity as the provider of money transmission in the transaction.

181 c. Bears sole responsibility to satisfy the outstanding money transmission obligation to the  
182 sender, including the obligation to make the sender whole in connection with any failure to transmit the  
183 funds to the sender's designated recipient.

184 (4) The United States or a department, agency, or instrumentality thereof, or its agent.

185 (5) Money transmission by the United States Postal Service or by an agent of the United States Postal Service.

186 (6) A state, county, city, or any other governmental agency or governmental subdivision or  
187 instrumentality of a state, or its agent.

188 (7) A federally insured depository financial institution, bank holding company, office of an international  
189 banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act, 12  
190 U.S.C. § 3102, as amended or recodified from time to time, corporation organized pursuant to the Bank Service  
191 Corporation Act, 12 U.S.C. §§ 1861-1867, as amended or recodified from time to time, or corporation organized  
192 under the Edge Act, 12 U.S.C. §§ 611-633, as amended or recodified from time to time.

193 (8) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency  
194 by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a  
195 state or governmental subdivision, agency, or instrumentality thereof.

196 (9) A board of trade designated as a contract market under the federal Commodity Exchange Act, 7  
197 U.S.C. §§ 1-25, as amended or recodified from time to time, or a person that, in the ordinary course of business,  
198 provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

199 (10) A registered futures commission merchant under the federal commodities laws to the extent of its  
200 operation as such a merchant.

201 (11) A person registered as a securities broker-dealer under federal or state securities laws to the extent of  
202 its operation as such a broker-dealer.

203 (12) An individual employed by a licensee, authorized delegate, or any person exempted from the  
204 licensing requirements of the chapter when acting within the scope of employment and under the supervision of the  
205 licensee, authorized delegate, or exempted person as an employee and not as an independent contractor.

206 (13) A person expressly appointed as a third party service provider to or agent of an entity exempt under  
207 paragraph (a)(7) of this section, solely to the extent that all of the following conditions are satisfied:

208 a. The service provider or agent is engaging in money transmission on behalf of and pursuant to a  
209 written agreement with the exempt entity that sets forth the specific functions that the service provider or  
210 agent is to perform.

211 b. The exempt entity assumes all risk of loss and all legal responsibility for satisfying the  
212 outstanding money transmission obligations owed to purchasers and holders of the outstanding money  
213 transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the  
214 service provider or agent.

215 (14) A person exempt by regulation or if the Commissioner finds such exemption to be in the public  
216 interest and that the regulation of such person is not necessary for the purposes of this chapter.

217 (b) The Commissioner may require that any person claiming to be exempt from licensing pursuant to this section  
218 provide information and documentation to the Commissioner demonstrating that it qualifies for any claimed exemption.

219 § 2306. Application and license fees.

220 (a) An application for a license must be in writing on a form the Commissioner prescribes. The application must  
221 include all of the following:

222 (1) The legal name and every address where the applicant will conduct business.

223 (2) If the applicant is a partnership, association, corporation, or other form of business organization, the  
224 name and address of each member, director, and principal officer.

225 (3) A description of the applicant's activities in detail and for the periods the Commissioner requires.

226 (4) Other information the Commissioner requires.

227 (b) At the time of application, or during an investigation of the application, the Commissioner may require any of  
228 the following individuals provide a complete set of fingerprints for a criminal background investigation:

229                   (1) The applicant or the applicant's spouse.

230                   (2) A principal of the applicant.

231                   (3) An individual who is a person in control of the applicant.

232                   (4) A proposed key individual.

233                   (5) Any other individual associated with the applicant and the proposed licensed activities.

234                   (c) The applicant shall provide the fingerprints to the Commissioner or a designee of the Commissioner for the  
235 background investigation.

236                   (d) At the time of application, the applicant shall pay to the Commissioner a non-refundable investigation fee of  
237 \$172.50.

238                   § 2307. Issuance of license.

239                   (a) Upon receipt of an application for an original license that contains all required items, the Commissioner shall  
240 promptly notify the applicant in writing of the date on which the application is deemed complete.

241                   (b) A determination by the Commissioner that an application is complete and accepted for processing means only  
242 that the application appears to include all required items and addresses all required matters. The determination does not  
243 constitute an assessment of the substance of the application or the sufficiency of the information provided.

244                   (c) Upon determining an application is complete, the Commissioner shall investigate the applicant's financial  
245 condition and responsibility, financial and business experience, character, and general fitness. The Commissioner may  
246 conduct an on-site investigation of the applicant at the applicant's expense. The Commissioner shall issue a license if all of  
247 the following conditions are satisfied:

248                   (1) The applicant has complied with § 2306 of this title.

249                   (2) The applicant's financial condition and responsibility, financial and business experience, competence,  
250 character, and general fitness of the applicant; and the competence, experience, character, and general fitness of  
251 the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit  
252 the applicant to engage in money transmission.

253                   (d) If an applicant is subject to a multistate licensing process, the Commissioner may accept the investigation  
254 results of a lead investigative state for the purpose of subsection (c) of this section if the lead investigative state has  
255 sufficient staffing, expertise, and minimum standards.

256                   (e) If an application is denied, the Commissioner shall issue a formal written notice of denial within 30 days of the  
257 decision. The notice must include a written order setting forth the facts upon which the denial is based and advising the  
258 applicant of the right to request a hearing in accordance with Chapter 101 of Title 29.

259 (f) An initial license term begins on the date the application is approved and expires on December 31 of that year.  
260 If an initial license is issued between November 1 and December 31, the license shall remain valid until December 31 of the  
261 following year.

262 (g) Upon approval of an application and the applicant's payment of an annual license fee of \$230, plus \$4.60 for  
263 each authorized delegate location in this State in excess of 1, the Commissioner shall issue a license to the applicant.

264 § 2308. Net worth.

265 (a) A licensee shall maintain at all times a tangible net worth of the greater of \$100,000 or 3% of total assets for  
266 the first \$100 million, 2% of additional assets for \$100 million to \$1 billion, and 0.5% of additional assets for over \$1  
267 billion.

268 (b) A licensee shall demonstrate tangible net worth through its most recent audited or unaudited financial  
269 statements.

270 (c) Except as otherwise provided in subsections (a) and (b) of this section, the Commissioner may, for good cause  
271 shown, exempt these requirements in whole or in part.

272 § 2309. Surety bonds.

273 (a) A licensee shall file with the Commissioner an original corporate surety bond in a form satisfactory to the  
274 Commissioner. The bond must be issued by a corporation authorized to transact business in this State. The Commissioner  
275 shall determine the principal sum of the bond, which must be between \$100,000 and \$500,000. In determining the bond  
276 amount, the Commissioner must consider all of the following:

277 (1) The amount of the licensee's average daily money transmission liability in this State.

278 (2) The licensee's tangible net worth.

279 (3) The licensee's total assets.

280 (4) Any other factor the Commissioner deems relevant and appropriate.

281 (b) A licensee that maintains a bond in the maximum amount provided for in subsection (a) of this section is not  
282 required to calculate average daily money transmission liability.

283 (c) The Commissioner may not accept a bond unless it meets all of the following requirements:

284 (1) The aggregate value of the bond must be equal to or greater than the amount provided in subsection  
285 (a) of this section.

286 (2) The term of the bond must be commensurate with the license period or continuous.

287 (3) The expiration date of the bond may not be earlier than midnight of the date on which the license  
288 expires.

289                   (4) The bond runs to the State for the benefit of the Office of the State Bank Commissioner and for the  
290                   benefit of any consumer injured by a wrongful act, omission, default, fraud, or misrepresentation by a licensee in  
291                   the course of its activity.

292                   (d) Compensation under the bond is for actual losses and is not payable for claims made by a business creditor,  
293                   third-party service provider, agent, or person employed by the licensee.

294                   (e) An insurer shall pay a surety claim to the Office of the State Bank Commissioner within 90 days after receipt  
295                   of the claim. A claim paid after 90 days is subject to daily interest at the legal rate under § 2301 of Title 6. The aggregate  
296                   liability of the surety on the bond, excluding interest, may not exceed the amount of the bond.

297                   (f) If a licensee changes its surety company or the bond is amended, the licensee shall immediately provide the  
298                   Commissioner with the amended original copy of the surety bond. Cancellation of an existing bond by a surety is  
299                   ineffective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date  
300                   upon which cancellation takes effect.

301                   (g) The Commissioner may require potential claimants to provide documentation and affirmations as the  
302                   Commissioner determines are necessary. If the Commissioner determines that multiple consumers have been injured by a  
303                   licensee, the Commissioner may publish a notice to identify all relevant claims.

304                   (h) When a surety company receives a claim against the bond of a licensee, the surety company must immediately  
305                   notify the Commissioner. The surety company may not pay any claim unless and until it receives notice to do so from the  
306                   Commissioner.

307                   (i) The Commissioner shall submit a claim to the insurer within 2 years of the date of the cancellation or date of  
308                   termination of the surety bond.

309                   § 2310. Renewal of license.

310                   (a) A license under this chapter must be renewed annually. The annual renewal fee is \$230 plus \$4.60 for each  
311                   location in the State of the offices of the applicant's authorized delegates, in excess of 1, subject to the following:

312                                 (1) The fee must be paid no more than 60 days before the license expires.

313                                 (2) A renewal term is for a period of 1 year, beginning on January 1 and expiring on December 31 of the  
314                   same year.

315                   (b) A licensee shall submit a renewal application with the renewal fee, in a form and in a medium prescribed by  
316                   the Commissioner. The renewal application must state or contain a description of each material change in information  
317                   submitted by the licensee in its original license application which has not been reported to the Commissioner.

318 (c) The Commissioner may treat a renewal application as a new application if the Commissioner does not receive  
319 the application at least 30 days before the license expires.

320 (d) The Commissioner may grant an extension of a renewal date if the Commissioner finds good cause.

321 (e) The Commissioner may deny a license renewal if the licensee fails to comply with a supervisory directive.

322 (f) The Commissioner may use NMLS to process license renewals.

323 § 2311. Maintenance of license.

324 (a) If a licensee no longer meets the requirements for a license under this chapter, the Commissioner may suspend  
325 or revoke the license.

326 (b) An applicant shall, at all times, meet the licensing requirements of this chapter.

327 § 2312. Multi-state automated licensing system.

328 (a) The Commissioner may participate in an automated system involving 1 or more other states to facilitate the  
329 application and licensing processes of this chapter.

330 (b) If the Commissioner joins a system under subsection (a) of this section, the Commissioner may establish  
331 additional requirements by regulation as needed.

332 (c) The administrator of a system under subsection (a) of this section may do all of the following on behalf of the  
333 Commissioner:

334 (1) Collect from an applicant or licensee subject to the system a payment due to the Commissioner under  
335 this chapter.

336 (2) Collect information and maintain records in an electronic or other format relating to an applicant or  
337 licensee.

338 (3) Submit fingerprints and other information required for a criminal history background check to the  
339 Federal Bureau of Investigation or other law-enforcement agency.

340 (d) Information maintained on a system under subsection (a) of this section regarding an applicant or licensee may  
341 be shared with any other state participating in that system for the purpose of licensing, regulating, or supervising the  
342 applicant or licensee under a statute similar to this chapter, if that state could have obtained the information directly from  
343 the applicant or licensee under its own law.

344 (e) The Commissioner shall ensure that the system maintains appropriate confidentiality, privacy, data security,  
345 and security breach notification policies that comply with Delaware law.

346 § 2313. Relationship to federal law.

347 (a) If a provision of this chapter is inconsistent with a federal law governing money transmission, the federal law  
348 preempts this chapter to the extent of the inconsistency.

349 (b) If an inconsistency exists under subsection (a) of this section, the Commissioner may provide interpretive  
350 guidance to do all of the following:

351 (1) Identify the inconsistency.

352 (2) Identify the appropriate means of compliance with state or federal law.

353 Subchapter III. Acquisition of Control and Change of Key Individuals

354 § 2314. Acquisition of control.

355 (a) A person, or group of persons acting in concert, shall obtain the written approval of the Commissioner prior to  
356 acquiring control of a licensee. This requirement does not apply to an individual who becomes a key individual in the  
357 ordinary course of business without acquiring a controlling interest.

358 (b) To request approval, the person or group of persons under subsection (a) of this section, shall, in cooperation  
359 with the licensee, submit the following:

360 (1) An application in a form and in a medium prescribed by the Commissioner.

361 (2) A non-refundable investigation fee of \$172.50.

362 (c) The Commissioner may allow the submission of required information through methods other than NMLS upon  
363 request.

364 (d) The application must include all required information for any new key individuals who have not previously  
365 completed the requirements for a license.

366 (e) The Commissioner shall approve or deny the application within a reasonable time after it is deemed complete.

367 (f) A determination by the Commissioner that an application is complete and is accepted for processing means only  
368 that the application appears to include all required items and address all required matters. The determination does not  
369 constitute an assessment of the substance of the application or the sufficiency of the information provided.

370 (g) Upon determining an application is complete, the Commissioner shall investigate the applicant's financial  
371 condition and responsibility, financial and business experience, character, and general fitness of the person, or group of  
372 persons acting in concert, seeking to acquire control. The Commissioner shall approve an acquisition of control under this  
373 section if the Commissioner finds all of the following:

374 (1) The requirements of subsections (b) and (d) have been satisfied, as applicable.

375 (2) The financial condition and responsibility, financial and business experience, competence, character,  
376 and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the

377 competence, experience, character, and general fitness of the key individuals and persons that would be in control  
378 of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or  
379 group of persons acting in concert, to control the licensee.

380 (h) If an applicant avails itself or is otherwise subject to a multistate licensing process, the Commissioner is  
381 authorized to accept the investigation results of a lead investigative state for the purpose of this section if the lead  
382 investigative state has sufficient staffing, expertise, and minimum standards.

383 (i) The Commissioner shall issue a formal written notice of the denial of a license application within 30 days of the  
384 decision to deny the application. The Commissioner shall issue a written order that includes a statement of the facts upon  
385 which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29.

386 (j) The requirements of subsections (a) and (b) of this section do not apply to any of the following:

387 (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the  
388 shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee.

389 (2) A person that acquires control of a licensee by devise or descent.

390 (3) A person that acquires control of a licensee as a personal representative, custodian, guardian,  
391 conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law.

392 (4) A person that is exempt under § 2305(a)(7) of this title.

393 (5) A person that the Commissioner determines is not subject to subsection (a) of this section based on the  
394 public interest.

395 (6) A public offering of securities of a licensee or a person in control of a licensee.

396 (7) An internal reorganization of a person in control of the licensee where the ultimate person in  
397 control of the licensee remains the same.

398 (k) Persons in paragraphs (j)(2) through (7) of this section, in cooperation with the licensee, shall notify the  
399 Commissioner within 15 days after the acquisition of control.

400 (l) The requirements of subsections (a) and (b) of this section do not apply to a streamlined acquisition of control,  
401 provided that all of the following requirements are satisfied:

402 (1) The person has not had a license revoked or suspended and has not controlled a licensee that has had a  
403 license revoked or suspended, while the person was in control of that licensee within the previous 5 years.

404 (2) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for  
405 compliance at its most recent examination by an MSB accredited state, if a rating was given.

406                   (3) The licensee to be acquired, and the person acquiring control if that person is a licensee, are projected  
407                   to meet the requirements of §§ 2308, 2309, and 2321 of this title after the acquisition of control is completed.

408                   (4) The licensee to be acquired, and the licensee making the acquisition, will not implement any material  
409                   changes to their respective business plans as a result of the acquisition of control.

410                   (5) The person provides notice of the acquisition in cooperation with the licensee and attests to the  
411                   requirements of this subsection in a form and in a medium prescribed by the Commissioner.

412                   (m) A notice provided under subsection (l) of this section is deemed approved if the Commissioner does not issue  
413                   a notice of disapproval within 30 days after the date the Commissioner determines the notice is complete.

414                   (n) Prior to filing an application for approval to acquire control, a person may request in writing a determination  
415                   from the Commissioner as to whether the person would be considered a person in control of a licensee upon consummation  
416                   of a proposed transaction. If the Commissioner determines that the person would not be a person in control, the proposed  
417                   person and transaction are not subject to the requirements of subsections (a) and (b) of this section.

418                   (o) If an applicant is subject to a multistate licensing process that includes a control determination, the  
419                   Commissioner may accept the investigation results and determination of a lead investigative state. The Commissioner may  
420                   rely on such results provided the lead state has sufficient staffing, expertise, and adheres to minimum regulatory standards  
421                   consistent with this chapter

422                   § 2315. Notice and information requirements for a change of key individuals.

423                   (a) A licensee adding or replacing any key individual shall do all of the following:

424                                 (1) Provide notice in a manner prescribed by the Commissioner within 15 days after the effective date of the  
425                                 key individual's appointment.

426                                 (2) Provide information as required by the Commissioner within 45 days of the effective date.

427                   (b) Within 90 days of the date on which the notice provided pursuant to this section was determined to be complete, the  
428                   Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of  
429                   the individual is not in the best interests of the public or the customers of the licensee to permit the individual to be a key  
430                   individual of the licensee.

431                   (c) A notice of disapproval must include a statement of the basis for the disapproval and must be sent to the licensee  
432                   and the disapproved individual. A licensee may appeal a notice of disapproval in accordance with Chapter 101 of Title 29  
433                   after receipt of the notice of disapproval.

434                   (d) A key individual is deemed approved if the Commissioner does not issue a notice of disapproval within 90  
435                   days after the Commissioner determines the notice is complete.

436 (e) If a licensee is subject to a multistate licensing process that includes a key individual notice review, the  
437 Commissioner may accept the investigation results and determination of another state. The Commissioner may rely on such  
438 findings provided the investigating state has sufficient staffing, expertise, and adheres to regulatory standards consistent  
439 with this chapter.

440 Subchapter IV. Records and Reporting

441 § 2316. Maintenance of books and records by licensee.

442 Every licensee, and as applicable, the authorized delegate, shall maintain books, accounts and records relating to all  
443 transactions under this chapter necessary to enable the Commissioner to enforce full compliance with this chapter.

444 § 2317. Retention of books and records by licensee.

445 The Commissioner shall prescribe the minimum information to be maintained in the books, accounts, and records of  
446 a licensee and its authorized delegates to ensure the Commissioner can effectively determine compliance with this chapter.

447 § 2318. Contents of books and records.

448 A licensee and an authorized delegate shall keep books, accounts, and records available as provided in this chapter for  
449 the period the Commissioner requires by regulation.

450 § 2319. Reporting requirements.

451 The Commissioner shall prescribe reporting requirements, including all of the following:

452 (1) Reports of condition and income.

453 (2) Authorized delegate reports.

454 (3) Submission of audited financial statements.

455 (4) The reporting of any other event the Commissioner prescribes by regulation.

456 § 2320. Bank Secrecy Act reports.

457 A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping,  
458 and suspicious activity reporting requirements under the Bank Secrecy Act and other federal and state laws relating to  
459 money laundering. The timely filing of a complete and accurate report with the appropriate federal agency is deemed  
460 compliant with the requirements of this section.

461 § 2321. Maintenance of permissible investments.

462 (a) A licensee shall maintain at all times permissible investments with a market value of at least the aggregate amount  
463 of all its outstanding money transmission obligations. The market value must be computed under United States generally  
464 accepted accounting principles.

465 (b) The licensee shall maintain permissible investments in a manner the Commissioner prescribes by regulation.

466 § 2322. Supervision and examination of business by Commissioner.

467 (a) Every person or combination of persons licensed to transact business as provided in this chapter is subject to  
468 the supervision and examination of the Commissioner. The Commissioner or the Commissioner's authorized representative  
469 shall examine each licensee annually or at intervals the Commissioner determines are necessary.

470 (b) During an examination, the Commissioner or the Commissioner's authorized representative must be given  
471 access to every part of the office or place of business visited and to the assets, securities, books, and papers of the business.

472 (c) An examination must include a thorough review of the licensee's affairs, including resources, liabilities,  
473 investment of funds, and the business operations and internal controls. The Commissioner shall determine compliance with  
474 this chapter, regulations adopted under this chapter, and other applicable law. The Commissioner may examine a person under  
475 oath or affirmation regarding the affairs of the licensee.

476 (d) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner  
477 may retain 1 or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in the examination.  
478 Within 10 days after receipt of a statement from the Commissioner, the licensee shall pay or reimburse the fees, costs and  
479 expenses of any third parties retained by the Commissioner under this subsection.

480 (e) The Commissioner may prescribe regulations to carry out the purposes of this chapter.

481 § 2323. Suspension and revocation.

482 (a) The Commissioner may suspend or revoke a license or order a licensee to revoke the designation of an  
483 authorized delegate if any of the following apply:

484 (1) The licensee fails to comply with any provision of this chapter, any rule or regulation adopted by the  
485 Commissioner, or any other applicable state or federal law.

486 (2) The Commissioner becomes aware of a fact or condition that, had it existed at the time of the original  
487 application, would have provided grounds for the Commissioner to deny the application.

488 (3) The licensee fails to cooperate with an examination or investigation by the Commissioner.

489 (4) The licensee engages in fraud, intentional misrepresentation, or gross negligence or employs operational  
490 practices that are unfair, deceptive, or abusive.

491 (5) An authorized delegate is convicted of a state or federal anti-money laundering statute, or violates a rule  
492 adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness.

493 (6) The competence, experience, character, or general fitness of the licensee, authorized delegate, person  
494 in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the  
495 public interest.

496                   (7) The licensee engages in unsafe or unsound practice.

497                   (8) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the  
498 benefit of its creditors.

499                   (9) The licensee fails to remove an authorized delegate after being serviced with a final order from the  
500 Commissioner finding that the delegate has violated this chapter.

501                   (b) In determining whether a licensee is engaging in an unsafe or unsound practice, the Commissioner may  
502 consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation  
503 of this chapter, and the previous conduct of the person involved.

504                   § 2324. Suspension and revocation of authorized delegates.

505                   (a) The Commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the  
506 Commissioner finds any of the following apply:

507                   (1) The authorized delegate violates this chapter or a rule adopted or an order issued under this chapter.

508                   (2) The authorized delegate does not cooperate with an examination or investigation by the  
509 Commissioner.

510                   (3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence.

511                   (4) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute.

512                   (5) The competence, experience, character, or general fitness of the authorized delegate or a person in  
513 control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to  
514 provide money transmission.

515                   (6) The authorized delegate is engaging in an unsafe or unsound practice.

516                   (b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the Commissioner  
517 may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss,  
518 the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of  
519 the authorized delegate.

520                   (c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized  
521 delegate in accordance with Chapter 101 of Title 29.

522                   Subchapter V. Authorized Delegates

523                   § 2325. Relationship between licensee and authorized delegate.

524                   (a) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as  
525 the licensee's authorized delegate, the licensee shall do all of the following:

526                   (1) Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that  
527 the licensee's authorized delegates comply with applicable state and federal law.

528                   (2) Enter into a written contract that complies with subsection (c) of this section.

529                   (3) Conduct a reasonable risk-based background investigation sufficient for the licensee to determine  
530 whether the authorized delegate has complied and will likely comply with applicable state and federal law.

531                   (b) An authorized delegate shall operate in full compliance with this chapter.

532                   (c) The written contract required by subsection (a) of this section must be signed by the licensee and the authorized  
533 delegate and must include all of the following:

534                   (1) Appoint the person signing the contract as the licensee's authorized delegate with the authority to  
535 conduct money transmission on behalf of the licensee.

536                   (2) Define the nature and scope of the relationship between the licensee and the authorized delegate and  
537 the respective rights and responsibilities of the parties.

538                   (3) Require the authorized delegate to agree to fully comply with all applicable state and federal laws,  
539 rules, and regulations pertaining to money transmission, including this chapter and regulations implementing this  
540 chapter, relevant provisions of the Bank Secrecy Act and the USA PATRIOT Act.

541                   (4) Require the authorized delegate to remit and handle money and monetary value in accordance with  
542 the terms of the contract between the licensee and the authorized delegate.

543                   (5) Impose a trust on money and monetary value net of fees received for money transmission for the  
544 benefit of the licensee.

545                   (6) Require the authorized delegate to prepare and maintain records as required by this chapter or as the  
546 Commissioner reasonably requests.

547                   (7) Acknowledge that the authorized delegate consents to examination or investigation by the  
548 Commissioner.

549                   (8) Acknowledge that the licensee is subject to regulation by the Commissioner and that, as part of that  
550 regulation, the Commissioner may suspend or revoke an authorized delegate designation or require the licensee to  
551 terminate an authorized delegate designation.

552                   (9) Acknowledge receipt of the written policies and procedures required under paragraph (a)(1) of this  
553 section.

554                   (d) If a license is suspended, revoked, surrendered, or expired, the licensee shall, within 5 business days, provide  
555 documentation to the Commissioner confirming that all authorized delegates have been notified of the status change. Upon

556 the occurrence of any such event, all authorized delegates shall immediately cease providing money transmission services  
557 on behalf of the former licensee.

558 (e) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received  
559 from money transmission. If any authorized delegate commingles any funds received from money transmission with any  
560 other funds or property owned or controlled by the authorized delegate, all commingled funds and other property must be  
561 considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money  
562 transmission.

563 (f) An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee.

564 § 2326. Unauthorized activities.

565 A person may not engage in the business of money transmission on behalf of a person not licensed under this  
566 chapter or not exempt pursuant to Subchapter II of this chapter. A person that engages in such activity provides money  
567 transmission to the same extent as if the person were a licensee and is jointly and severally liable with the unlicensed or  
568 nonexempt person.

569 Subchapter VI. Disclosures

570 § 2327. Timely transmission.

571 (a) Every licensee shall forward all money received for transmission in accordance with the terms of the agreement  
572 between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender  
573 may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

574 (b) If a licensee fails to forward money received for transmission in accordance with this section, the licensee shall  
575 respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal  
576 law, rule, or regulation.

577 § 2328. Refunds.

578 (a) This section does not apply to any of the following:

579 (1) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart  
580 B, as amended.

581 (2) Money received for transmission under a written agreement between the licensee and payee to process  
582 payments for goods or services provided by the payee.

583 (b) A licensee shall refund to the sender all money received for transmission within 10 days after receiving the  
584 sender's written request for a refund, unless any of the following occurs:

585 (1) The licensee forwards the money within 10 days after the date the licensee receives the money.

586                   (2) The licensee gives instructions committing an equivalent amount of money to the person designated by  
587 the sender within 10 days after the date the licensee receives the money.

588                   (3) The agreement between the licensee and the sender instructs the licensee to forward the money more  
589 than 10 days after the date the licensee receives the money.

590                   (4) The licensee has a reasonable belief that a crime or violation of law, rule, or regulation has occurred, is  
591 occurring, or may occur.

592                   (5) The refund request does not provide the licensee with sufficient information to identify any of the  
593 following:

594                             a. The name, address, or telephone number of the sender.

595                             b. The name of the recipient or the location where the money was to be sent.

596                   § 2329. Receipts.

597                   (a) This section does not apply to any of the following:

598                             (1) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart  
599 B, as amended.

600                             (2) Money received for transmission that is not primarily for personal, family or household purposes.

601                             (3) Money received for transmission pursuant to a written agreement between the licensee and payee to  
602 process payments for goods or services provided by the payee.

603                             (4) Payroll processing services.

604                   (b) For purposes of this section "receipt" means a paper receipt, electronic record or other written confirmation.

605 For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an  
606 electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All  
607 electronic receipts must be provided in a retainable form.

608                   (c) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

609 The receipt must be in English and in every other language principally used by the licensee or authorized delegate to  
610 advertise, solicit, or negotiate transactions at that location. The receipt must contain all of the following:

611                             (1) The name of the sender.

612                             (2) The name of the designated recipient.

613                             (3) The date of the transaction.

614                             (4) The unique transaction or identification number.

615                   (5) The name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's  
616 customer service telephone number.

617                   (6) The amount of the transaction in United States dollars.

618                   (7) Any fee charged by the licensee to the sender for the transaction.

619                   (8) Any taxes collected by the licensee from the sender for the transaction.

620                   § 2330. Disclosures for payroll processing services.

621                   (a) A licensee that provides payroll processing shall do all of the following:

622                         (1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being  
623 deducted from an account.

624                         (2) Make available worker paystubs or an equivalent statement to workers.

625                   (b) Subsection (a) of this section does not apply to a licensee providing payroll processing services where the  
626 licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required  
627 by paragraph (a)(2) of this section.

628                   Subchapter VII. Miscellaneous Provisions

629                   § 2331. Application and construction.

630                   In applying and construing this chapter, a person must consider the need to promote uniformity of the law with  
631 respect to its subject matter among states that enact it, in whole or in part.

632                   § 2332. Transition period.

633                   (a) Except as provided in subsection (b) of this section, a licensee in this State engaging in the business of money  
634 transmission is exempt from the provisions of this chapter, to the extent the provisions conflict with current law or establish  
635 new requirements not imposed under current law, until the licensee renews its current license or for 12 months after [the  
636 effective date of this Act], whichever is later.

637                   (b) A licensee is only required to amend its authorized delegate contracts for contracts entered into or amended  
638 after [the effective date of this Act] or the completion of any transition period contemplated under subsection (a) of this  
639 section. This section does not limit an authorized delegate's obligations to operate in full compliance with this chapter as  
640 required by § 2325(c) of this title.

641                   (c) A person providing payroll processing services in this State without a license is not in violation of § 2304(a) of  
642 this title if the person applies for a license within 6 months after [the effective date of this Act] or by April 1, 2027,  
643 whichever is later.

644                   Subchapter VIII. Virtual Currency

645 § 2333. Definitions.

646 As used in this subchapter:

647 (1) “Control” means the power to execute unilaterally, or prevent indefinitely, a virtual currency  
648 transaction.

649 (2) “Control of virtual currency,” when used in reference to a transaction or relationship involving virtual  
650 currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction.

651 (3) “Exchange,” used as a verb, means to assume control of virtual currency from or on behalf of a  
652 person, at least momentarily, to sell, trade, or convert any of the following:

653 a. Virtual currency for money, bank credit, or one or more forms of virtual currency.

654 b. Money or bank credit for one or more forms of virtual currency.

655 (4) “Transfer” means to assume control of virtual currency from or on behalf of a person and to do any of  
656 the following:

657 a. Credit the virtual currency to the account of another person.

658 b. Move the virtual currency from 1 account of a person to another account of the same person.

659 c. Relinquish control of virtual currency to another person.

660 (5) “U.S. Dollar equivalent of virtual currency” means the equivalent value of a particular virtual  
661 currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular  
662 date or period specified in this subchapter.

663 (6) a. “Virtual currency” means a digital representation of value that is all of the following:

664 1. Used as a medium of exchange, unit of account, or store of value.

665 2. Is not money, whether or not denominated in money.

666 b. “Virtual currency” does not include any of the following:

667 1. A transaction in which a merchant grants, as part of an affinity or rewards program,  
668 value that cannot be taken from or exchanged with the merchant for money, bank credit, or  
669 virtual currency.

670 2. A digital representation of value issued by or on behalf of a publisher and used solely  
671 within an online game, game platform, or family of games sold by the same publisher or offered  
672 on the same game platform.

673 (7) “Virtual-currency administration” means issuing virtual currency with the authority to redeem the  
674 currency for money, bank credit, or other virtual currency.

675 (8) "Virtual-currency business activity" means any of the following:

676 a. Exchanging, transferring, or storing virtual currency or engaging in virtual-currency

677 administration, whether directly or through an agreement with a virtual-currency control-services vendor.

678 b. Holding electronic precious metals or electronic certificates representing interests in precious

679 metals on behalf of another person or issuing shares or electronic certificates representing interests in

680 precious metals.

681 c. Exchanging 1 or more digital representations of value used within 1 or more online games,

682 game platforms, or family of games for any of the following:

683 1. Virtual currency offered by or on behalf of the same publisher from which the

684 original digital representation of value was received.

685 2. Money or bank credit outside the online game, game platform, or family of games

686 offered by or on behalf of the same publisher from which the original digital representation of

687 value was received.

688 (9) "Virtual-currency control-services vendor" means a person that has control of virtual currency solely

689 under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

690 § 2334. Scope.

691 (a) This subchapter does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency

692 administration to the extent any of the following laws govern the activity:

693 (1) The Electronic Fund Transfer Act of 1978, 15 U.S.C. §§ 1693 through 1693r, as amended.

694 (2) The Securities Exchange Act of 1934, 15 U.S.C. §§ 78a through 78oo, as amended.

695 (3) The Commodities Exchange Act of 1936, 7 U.S.C. §§ 1 through 27f, as amended.

696 (4) The Delaware Securities Act, Chapter 73 of Title 6.

697 (b) This subchapter does not apply to the following:

698 (1) A person that provides only connectivity software, computing power to a decentralized virtual

699 currency network, or a protocol governing the transfer of digital value.

700 (2) A person that provides only data storage, cybersecurity, or non-custodial security services for a

701 business engaged in virtual-currency activity, and does not otherwise hold or control virtual currency on behalf of

702 another person.

703 (3) A person that provides virtual currency enterprise solutions solely to other exempt entities, provided

704 the person has no direct relationship with and does not handle the assets of an end-user.

705                   (4) A person using virtual currency, including creating, investing, buying or selling, or obtaining virtual  
706 currency as payment for the purchase or sale of goods or services, solely for any of the following purposes:

707                   a. On its own behalf.

708                   b. For personal, family, or household purposes.

709                   c. For academic purposes.

710                   (5) A person whose virtual currency business activity with or on behalf of persons is reasonably expected  
711 to be valued, in the aggregate, on an annual basis at \$5,000 or less, measured by the U.S. Dollar equivalent of  
712 virtual currency.

713                   (6) An attorney to the extent of providing escrow services.

714                   (7) A title insurance company to the extent of providing escrow services.

715                   (8) A securities intermediary, as defined under § 8-102 of Title 6, or a commodity intermediary, as  
716 defined under §9-102 of Title 6, that does all of the following:

717                   a. Does not engage in virtual currency business activity with or on behalf of a person in the  
718 ordinary course of business, except to maintain securities accounts or commodities accounts.

719                   b. Is regulated as a securities intermediary or commodity intermediary under federal law, the law  
720 of this State other than this chapter, or the law of another state.

721                   c. Provides a person with protections that are at least as protective as those established under §  
722 2337 of this title.

723                   (9) A secured creditor under Article 9 of Title 6 or a creditor with a judicial lien or lien arising by  
724 operation of law on collateral that is virtual currency. This exemption is limited to the creditor's enforcement of the  
725 security interest in compliance with Article 9 of Title 6 or compliance with the law applicable to the lien.

726                   (10) A virtual currency control services vendor.

727                   (11) A person that does not receive compensation from another person for any of the following:

728                   a. Providing virtual currency products or services.

729                   b. Conducting virtual currency business activity.

730                   c. Engaging in testing products or services with the person's own funds.

731                   (c) The Commissioner may determine that a person or class of persons, given facts particular to the person or  
732 class, is exempt from this subchapter. In making this determination, the Commissioner shall consider whether the person or  
733 class is covered by requirements imposed under federal law on a money-service business.

734                   § 2335. Conditions precedent to engaging in virtual currency business activity.

735 (a) A person may not engage in virtual-currency business activity, or hold itself out as being able to engage in  
736 virtual-currency business activity, with or on behalf of another person unless the person is one of the following:

737 (1) Licensed in this State by the Commissioner pursuant to § 2307 of this title.

738 (2) Exempt from licensing under § 2305 of this title.

739 (b) A person that is licensed to engage in virtual currency business activity is engaged in the business of money  
740 transmission and is subject to the requirements of this subchapter.

741 § 2336. Required disclosures.

742 (a) A licensee engaged in virtual-currency business activity shall provide all disclosures required by subsection (b)  
743 of this section and any additional disclosures the Commissioner deems necessary for consumer protection. These  
744 disclosures must be made separately from any other information, written in plain language, and presented in a clear and  
745 conspicuous manner in a record the person may retain. A licensee may propose alternate disclosure formats for the  
746 Commissioner's approval if more appropriate for their specific digital platform.

747 (b) Before establishing a relationship with a person, a licensee must disclose, to the extent applicable to the virtual-  
748 currency business activity, that the licensee will undertake all of the following with the person:

749 (1) A schedule of fees and charges the licensee may assess, the manner by which fees and charges will be  
750 calculated if they are not set in advance and disclosed, and the timing of the fees and charges.

751 (2) Whether the product or service is covered by any of the following:

752 a. A form of insurance or is otherwise guaranteed against loss by an agency of the United States  
753 for the following:

754 1. Up to the full U.S. Dollar equivalent of virtual currency purchased from the licensee  
755 or for control of virtual currency by the licensee as of the date of the placement or purchase,  
756 including the maximum amount provided by insurance under the Federal Deposit Insurance  
757 Corporation or otherwise available from the Securities Investor Protection Corporation.

758 2. If not provided at the full U.S. Dollar equivalent of virtual currency purchased from  
759 the licensee or for control of virtual currency by the licensee, the maximum amount of coverage  
760 for each person expressed in the U.S. Dollar equivalent of the virtual currency.

761 b. Private insurance against theft or loss, including cyber theft or theft by other means.

762 (3) The irrevocability of a transfer or exchange and any exception to irrevocability.

763 (4) The terms and conditions governing transfers and exchanges, including the following:

764 a. Liability for an unauthorized, mistaken, or accidental transfer or exchange.

765                    b. The person's responsibility to provide notice to the licensee of the transfer or exchange.

766                    c. The basis for any recovery by the person from the licensee.

767                    d. General error-resolution rights applicable to the transfer or exchange.

768                    e. The method for the person to update the person's contact information with the licensee.

769                    (5) The date or time when the transfer or exchange is made and the person's account is debited may differ

770                    from the date or time when the person initiates the instruction to make the transfer or exchange.

771                    (6) Whether the person has a right to stop a pre-authorized payment or revoke authorization for a transfer

772                    and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer.

773                    (7) The person's right to receive a receipt, trade ticket, or other evidence of the transfer or exchange.

774                    (8) The person's right to at least 30 days' prior notice of a change in the licensee's fee schedule, other

775                    terms and conditions of operating its virtual-currency business activity with the person and the policies applicable

776                    to the person's account.

777                    (9) That virtual currency is not money.

778                    (c) Except as otherwise provided in subsection (d) of this section, at the conclusion of a virtual currency

779                    transaction with or on behalf of a person, a licensee shall provide the person a confirmation in a record that contains all of

780                    the following:

781                    (1) The name and contact information of the licensee, including information the person may need to ask a

782                    question or file a complaint.

783                    (2) The type, value, date, precise time, and amount of the transaction.

784                    (3) The fee charged for the transaction, including any charge for conversion of virtual currency to money,

785                    bank credit, or other virtual currency.

786                    (d) If a licensee discloses that it will provide a daily confirmation in the initial disclosure under subsection (c) of

787                    this section, the licensee may elect to provide a single, daily confirmation for all transactions with or on behalf of a person

788                    on that day instead of a per-transaction confirmation.

789                    § 2337. Property interests and entitlements to virtual currency.

790                    (a) A licensee that has control of virtual currency for one or more persons shall maintain control of virtual

791                    currency in each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual

792                    currency.

793 (b) If a licensee violates subsection (a) of this section, the property interests of the persons in the virtual currency  
794 are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the  
795 persons became entitled to the virtual currency or the licensee obtained control of the virtual currency.

796 (c) The virtual currency referred to in this section must be all of the following:

797 (1) Held for the persons entitled to the virtual currency.

798 (2) Not property of the licensee.

799 (3) Not subject to the claims of creditors of the licensee.

800 (4) Deemed a permissible investment by regulations set forth by the Commissioner through regulation.

801 § 2338. Additional requirements and clarifications for virtual currency business activities.

802 (a) A licensee engaged in virtual currency business activities must comply with all provisions of this subchapter to  
803 the extent applicable to the licensee's activities.

804 (b) A licensee engaged in virtual currency business activities may include in its calculation of tangible net worth  
805 virtual currency, measured by the average value of the virtual currency in U.S. Dollar equivalent over the prior 6 months,  
806 excluding control of virtual currency for a person entitled to the protections pursuant to § 2337 of this title.

807 (c) A licensee shall maintain, for all virtual currency business activity with or on behalf of a person 5 years after  
808 the date of the activity, a record of all of the following:

809 (1) Each transaction of the licensee with or on behalf of the person or for the licensee's account in this  
810 State, including all of the following:

811 a. The identity of the person.

812 b. The form of the transaction.

813 c. The amount, date, and payment instructions given by the person.

814 d. The account number, name, and United States Postal Service address of the person, and, to the  
815 extent feasible, other parties to the transaction.

816 (2) The aggregate number of transactions and aggregate value of transactions by the licensee with or on  
817 behalf of the person and for the licensee's account in this State, expressed in U.S. Dollar equivalent of virtual  
818 currency for the previous 12 calendar months.

819 (3) Each transaction in which the licensee exchanges 1 form of virtual currency for money or another  
820 form of virtual currency with or on behalf of the person.

821 (4) A general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses  
822 of the licensee.

823                   (5) Each business call report the licensee is required to create or provide to the Commissioner or NMLS.

824                   (6) Bank statements and bank reconciliation records for the licensee and the name, account number, and

825                   United States Postal Service address of each bank the licensee uses to conduct its virtual currency business activity

826                   with or on behalf of the person.

827                   (7) A report of any dispute with the person.

828                   (8) A report of any virtual currency business activity transaction with or on behalf of a person which the

829                   licensee was unable to complete.

830                   (d) A licensee shall maintain records required under subsection (c) of this section in a form that enables the

831                   Commissioner to determine whether the licensee is in compliance with this chapter, any court order, and law of this state

832                   other than this chapter.

833                   § 2339. Rules and regulations.

834                   The Commissioner may adopt rules and regulations necessary for the administration of this subchapter.

835                   Section 3. This Act is effective immediately and is to be implemented the earlier of the following:

836                   (1) One year from the date of the Act’s enactment.

837                   (2) Notice by the State Banking Commissioner published in the Register of Regulations that final

838                   regulations to implement this Act have been promulgated.

#### SYNOPSIS

This Act repeals the existing Chapter 23 of Title 5 and replaces it with the “Delaware Money Transmission and Virtual Currency Modernization Act.” This Act modernizes the State’s regulatory framework for money transmission and addresses the emergence of virtual currency. The Act allows the State Bank Commissioner to coordinate with other states in the licensing and supervision of money transmitters, utilizing the NMLS system. The Act establishes new safety and soundness standards, including a tiered net worth requirement based on total assets and updates surety bond requirements scaled to a licensee’s average daily money transmission liability.

The Act standardizes receipt requirements for both fiat and virtual currency transactions, provides a 10-day refund window for certain transmissions, and establishes specific disclosure rules for payroll processing services. This Act provides a 6-month window for general compliance and a 1-year period for licensees to meet new net worth and permissible investment standards.

This Act creates new regulatory framework for virtual currency business activity. It defines virtual currency and virtual currency business activity. It mandates specific consumer disclosures regarding the risks of virtual currency and establishes that virtual currency held by a licensee is a pro rata property interest not subject to the claims of the licensee’s creditors.

The Act allows the Commissioner to adopt rules and regulations for the administration of this chapter. The Act is to be implemented the earlier of 1 year from the date of the Act’s enactment or notice from the State Banking Commissioner that final regulations have been promulgated.

This Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend the general corporation law.

Author: Senator Mantzavinos