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

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 18
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

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):

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 Chapter 23, Title 5 of the Delaware Code is hereby repealed in its entirety.

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

Chapter 23. Money Transmission and Virtual Currency

Subchapter I. General Provisions

§ 2301. Title.

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

§ 2302. Purpose.

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

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

(2) Protect the public from financial crime.

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

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

§ 2303. Definitions.

As used in this chapter:

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

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

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

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

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

(6) “Commissioner” means the State Bank Commissioner.

(7) “Control” means any of the following:

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

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

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

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

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

(10) “Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.

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

(12) “Individual” means a natural person.

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

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

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

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

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

(18) a. “Money transmission” means any of the following:

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

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

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

b. “Money transmission” includes payroll processing services.

c. “Money transmission” does not include the provision solely of online or telecommunications services or network access.

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

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

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

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

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

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

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

(23) “Passive investor” means any of the following:

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

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

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

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

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

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

b. "Payment instrument" does not include stored value or any instrument that is any of the following:

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

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

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

b. "Payroll processing services" does not include any of the following:

1. An employer performing payroll processing services on its own behalf, on behalf of its affiliate, or a professional employment organization subject to regulation under other applicable state law.

2. A person designated as an agent of a payor for the purpose of providing payroll processing services for which the agent would otherwise need to be licensed under this chapter, if all of the following apply:

A. There is a written agreement between the payor and the agent that directs the agent to provide payroll services on the payor's behalf.

B. The payor holds the agent out to employees and other payees as providing payroll processing services on the payor's behalf.

C. The payor's obligation to a payee, including an employee or another party entitled to receive funds via the payroll processing services provided by the agent, is not extinguished if the agent fails to remit the funds to the payee.

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

(27) "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

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

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

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

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

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

Subchapter II. Licensing

§ 2304. License required.

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

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

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

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

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

§ 2305. Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A person registered as a securities broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative under federal or state securities laws to the extent of its operation as such a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative.

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

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

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

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

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

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

§ 2306. Application and license fees.

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

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

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

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

(4) Other information the Commissioner requires.

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

(1) The applicant or the applicant’s spouse.

(2) A principal of the applicant.

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

(4) A proposed key individual.

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

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

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

§ 2307. Issuance of license.

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

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

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

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

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

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

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

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

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

§ 2308. Net worth.

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

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

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

§ 2309. Surety bonds.

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

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

(2) The licensee's tangible net worth.

(3) The licensee's total assets.

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

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

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

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

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

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

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

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

(e) An insurer shall pay a surety claim to the Office of the State Bank Commissioner within 90 days after receipt 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 liability of the surety on the bond, excluding interest, may not exceed the amount of the bond.

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

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

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

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

§ 2310. Renewal of license.

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

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

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

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

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

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

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

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

§ 2311. Maintenance of license.

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

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

§ 2312. Multi-state automated licensing system.

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

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

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

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

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

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

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

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

§ 2313. Relationship to federal law.

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

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

(1) Identify the inconsistency.

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

Subchapter III. Acquisition of Control and Change of Key Individuals

§ 2314. Acquisition of control.

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

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

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

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

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

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

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

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

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

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

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) If an applicant is subject to a multistate licensing process that includes a control determination, the Commissioner may accept the investigation results and determination of a lead investigative state. The Commissioner may

rely on such results provided the lead state has sufficient staffing, expertise, and adheres to minimum regulatory standards consistent with this chapter

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

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

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

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

(b) Within 90 days of the date on which the notice provided pursuant to this section was determined to be complete, the Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of 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 individual of the licensee.

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

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

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

Subchapter IV. Records and Reporting

§ 2316. Maintenance of books and records by licensee.

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

§ 2317. Retention of books and records by licensee.

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

§ 2318. Contents of books and records.

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

§ 2319. Reporting requirements.

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

(1) Reports of condition and income.

(2) Authorized delegate reports.

(3) Submission of audited financial statements.

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

§ 2320. Bank Secrecy Act reports.

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

§ 2321. Maintenance of permissible investments.

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

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

§ 2322. Supervision and examination of business by Commissioner.

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

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

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

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

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

§ 2323. Suspension and revocation.

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

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

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

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

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

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

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

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

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

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

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

§ 2324. Suspension and revocation of authorized delegates.

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

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

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

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

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

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

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

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

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

Subchapter V. Authorized Delegates

§ 2325. Relationship between licensee and authorized delegate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If a license is suspended, revoked, surrendered, or expired, the licensee shall, within 5 business days, provide documentation to the Commissioner confirming that all authorized delegates have been notified of the status change. Upon the occurrence of any such event, all authorized delegates shall immediately cease providing money transmission services on behalf of the former licensee.

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

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

§ 2326. Unauthorized activities.

A person may not engage in the business of money transmission on behalf of a person not licensed under this chapter or not exempt pursuant to Subchapter II of this chapter. A person that engages in such activity provides money

transmission to the same extent as if the person were a licensee and is jointly and severally liable with the unlicensed or nonexempt person.

Subchapter VI. Disclosures

§ 2327. Timely transmission.

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

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

§ 2328. Refunds.

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

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

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

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

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

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

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

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

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

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

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

§ 2329. Receipts.

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

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

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

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

(4) Payroll processing services.

(b) For purposes of this section "receipt" means a paper receipt, electronic record or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts must be provided in a retainable form.

(c) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission. The receipt must be in English and in every other language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate transactions at that location. The receipt must contain all of the following:

(1) The name of the sender.

(2) The name of the designated recipient.

(3) The date of the transaction.

(4) The unique transaction or identification number.

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

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

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

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

§ 2330. Disclosures for payroll processing services.

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

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

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

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

Subchapter VII. Miscellaneous Provisions

§ 2331. Application and construction.

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

§ 2332. Transition period.

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

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

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

Subchapter VIII. Virtual Currency

§ 2333. Definitions.

As used in this subchapter:

(1) "Control" means the power to execute unilaterally, or prevent indefinitely, a virtual currency transaction.

(2) "Control of virtual currency," when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction. Control does not mean a person who retains the ability to terminate, suspend, or interrupt a virtual-currency transaction or similar action to prevent an unauthorized or fraudulent activity.

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

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

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

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

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

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

c. Relinquish control of virtual currency to another person.

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

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

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

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

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

1. A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money or bank credit and that primarily relates to such affinity or rewards program.

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

3. A digital representation of value that has value, utility, or significance beyond its mere existence as a digital asset, and that is not traded in such a manner or form that it should be considered a virtual currency, such as a mass-minted series of items with substantially similar or nearly identical traits that are marketed or sold interchangeably and that are primarily speculative in nature, including the digital equivalent of a tangible or intangible good such as any of the following:

A. A work of art, a musical composition, a literary work, or other intellectual property.

B. Collectibles, merchandise, virtual land, and in-game or in-application assets.

C. Affinity, rewards, or loyalty points, including airline miles or credit card points.

D. Rights, licenses, and tickets.

E. Any other digital representation of value that the Commissioner, by rule or regulation, determines has value, utility, or significance beyond its mere existence as a digital representation of value, including the digital equivalent of a tangible or intangible good.

The Commissioner, by rule or regulation, may determine whether such a digital representation of value under this paragraph (6)b.3. is traded in such a manner or form that it should be considered a virtual currency.

4. A digital representation of value that is not marketed, used, promoted, offered, or sold for investment or speculation. The Commissioner may adopt rules to clarify the scope and applicability of this paragraph (6)b.4.

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

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

1. Exchanging, transferring, or storing virtual currency as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of such services.

2. Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals.

b. “Virtual-currency business activity" does not include any of the following:

1. Peer-to-peer exchanges or transfers of virtual currency.

2. Software facilitating peer-to-peer exchanges or transfers that are intended to automatically execute, control, or document events and actions.

3. The development, publication, constitution, administration, maintenance, and dissemination of software in and of itself.

(9) "Virtual-currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

§ 2334. Scope.

(a) This subchapter does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent any of the following laws govern the activity:

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

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

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

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

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

(1) A person that provides only connectivity software, computing power to a decentralized virtual currency network, or a protocol governing the transfer of digital value.

(2) A person that provides only data storage, cybersecurity, or non-custodial security services for a business engaged in virtual-currency activity, and does not otherwise hold or control virtual currency on behalf of another person.

(3) A person that provides virtual currency enterprise solutions solely to other exempt entities, provided the person has no direct relationship with and does not handle the assets of an end-user.

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

a. On its own behalf.

b. For personal, family, or household purposes.

c. For academic purposes.

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

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

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

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

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

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

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

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

(10) A virtual currency control services vendor.

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

a. Providing virtual currency products or services.

b. Conducting virtual currency business activity.

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

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

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

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

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

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

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

§ 2336. Required disclosures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The date or time when the transfer or exchange is made and the person's account is debited may differ from the date or time when the person initiates the instruction to make the transfer or exchange.

(6) Whether the person has a right to stop a pre-authorized payment or revoke authorization for a transfer and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer.

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

(8) The person's right to at least 30 days' prior notice of a change in the licensee's fee schedule, other terms and conditions of operating its virtual-currency business activity with the person and the policies applicable to the person's account.

(9) That virtual currency is not money.

(c) Except as otherwise provided in subsection (d) of this section, at the conclusion of a virtual currency transaction with or on behalf of a person, a licensee shall provide the person a confirmation in a record that contains all of the following:

(1) The name and contact information of the licensee, including information the person may need to ask a question or file a complaint.

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

(3) The fee charged for the transaction, including any charge for conversion of virtual currency to money, bank credit, or other virtual currency.

(d) If a licensee discloses that it will provide a daily confirmation in the initial disclosure under subsection (c) of this section, the licensee may elect to provide a single, daily confirmation for all transactions with or on behalf of a person on that day instead of a per-transaction confirmation.

§ 2337. Property interests and entitlements to virtual currency.

(a) A licensee that has control of virtual currency for one or more persons shall maintain control of virtual currency in each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.

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

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

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

(2) Not property of the licensee.

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

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

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

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

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

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

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

a. The identity of the person.

b. The form of the transaction.

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

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

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

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

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

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

(6) Bank statements and bank reconciliation records for the licensee and the name, account number, and United States Postal Service address of each bank the licensee uses to conduct its virtual currency business activity with or on behalf of the person.

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

(8) A report of any virtual currency business activity transaction with or on behalf of a person which the licensee was unable to complete.

(d) A licensee shall maintain records required under subsection (c) of this section in a form that enables the Commissioner to determine whether the licensee is in compliance with this chapter, any court order, and law of this state other than this chapter.

§ 2339. Rules and regulations.

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

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

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

(2) Notice by the State Banking Commissioner published in the Register of Regulations that final regulations to implement this Act have been promulgated.