

2024 South Dakota Legislature

Senate Bill 58**AMENDMENT 58B
FOR THE INTRODUCED BILL**

1 **An Act to revise provisions regarding money transmission.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 51A-17 be amended with a NEW SECTION:**

4 Terms used in this Act mean:

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

8 (2) "Authorized delegate," a person a licensee designates to engage in money
9 transmission on behalf of the licensee;

10 (3) "Average daily money transmission liability," the amount of the licensee's
11 outstanding money transmission obligations in this state at the end of each day in
12 a given period of time, added together, and divided by the total number of days in
13 the given period of time. For purposes of calculating average daily money
14 transmission liability under this Act for any licensee required to do so, the given
15 period of time is the quarters ending March thirty-first, June thirtieth, September
16 thirtieth, and December thirty-first;

17 (4) "Bank Secrecy Act," the Bank Secrecy Act, 31 U.S.C. § 5311, et seq. and its
18 implementing regulations (January 1, 2024);

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

23 (6) "Control:"

24 (a) The power to vote, directly or indirectly, at least twenty-five percent of the
25 outstanding voting shares or voting interests of a licensee or person in
26 control of a licensee; the power to elect or appoint a majority of key

1 individuals or executive officers, managers, directors, trustees; other
2 persons exercising managerial authority of a person in control of a licensee;
3 or the power to exercise, directly or indirectly, a controlling influence over
4 the management or policies of a licensee or person in control of a licensee;

5 (b) A person is presumed to exercise a controlling influence when the person
6 holds the power to vote, directly or indirectly, at least ten percent of the
7 outstanding voting shares or voting interests of a licensee or person in
8 control of a licensee. A person presumed to exercise a controlling influence
9 as defined by this section can rebut the presumption of control if the person
10 is a passive investor;

11 (c) For purposes of determining the percentage of a person controlled by any
12 other person, the person's interest shall be aggregated with the interest of
13 any other immediate family member, including the person's spouse,
14 parents, children, siblings, mothers- and fathers-in-law, sons- and
15 daughters-in-law, brothers- and sisters-in-law, and any other person who
16 shares the person's home;

17 (7) "Eligible rating," a credit rating of any of the three highest rating categories
18 provided by an eligible rating service, whereby each category may include rating
19 category modifiers, such as "plus" or "minus" for S&P or the equivalent for any
20 other eligible rating service. Long-term credit ratings are deemed eligible if the
21 rating is equal to A- or higher by S&P or the equivalent from any other eligible
22 rating service. Short-term credit ratings are deemed eligible if the rating is equal
23 to or higher than A-2 or SP-2 by S&P or the equivalent from any other eligible
24 rating service. In the event that ratings differ among eligible rating services, the
25 highest rating shall apply when determining whether a security bears an eligible
26 rating;

27 (8) "Eligible rating service," any nationally recognized statistical rating organization as
28 defined by the U.S. Securities and Exchange Commission, and any other
29 organization designated by the director by rule or order;

30 (9) "Federally insured depository financial institution," a bank, credit union, savings
31 and loan association, trust company, savings association, savings bank, industrial
32 bank, or industrial loan company organized under the laws of the United States or
33 any state of the United States, when the bank, credit union, savings and loan
34 association, trust company, savings association, savings bank, industrial bank, or
35 industrial loan company has federally insured deposits;

- 1 (10) "In this state," at a physical location within this state for a transaction requested
2 in person. For a transaction requested electronically or by phone, the provider of
3 money transmission may determine if the person requesting the transaction is "in
4 this state" by relying on other information provided by the person regarding the
5 location of the individual's residential address or a business entity's principal place
6 of business or other physical address location and any records associated with the
7 person that the provider of money transmission may have that indicate the
8 location, including but not limited to an address associated with an account;
- 9 (11) "Individual," a natural person;
- 10 (12) "Key individual," any individual ultimately responsible for establishing or directing
11 policies and procedures of the licensee, such as an executive officer, manager,
12 director, or trustee;
- 13 (13) "Licensee," a person licensed under this Act;
- 14 (14) "Material litigation," litigation that, according to United States generally accepted
15 accounting principles, is significant to a person's financial health and would be
16 required to be disclosed in the person's annual audited financial statements, report
17 to shareholders, or similar records;
- 18 (15) "Money," a medium of exchange that is authorized or adopted by the United States
19 or a foreign government. The term includes a monetary unit of account established
20 by an intergovernmental organization or by agreement between two or more
21 governments. Money does not include any central bank digital currency;
- 22 (16) "Monetary value," a medium of exchange, whether or not redeemable in money;
- 23 (17) "Money transmission," any of the following:
24 (a) Selling or issuing payment instruments to a person located in this state;
25 (b) Selling or issuing stored value to a person located in this state; or
26 (c) Receiving money for transmission from a person located in this state.
27 The term includes payroll processing services. The term does not include the
28 provision solely of online or telecommunications services or network access;
- 29 (18) "MSB accredited state," a state agency that is accredited by the Conference of
30 State Bank Supervisors and Money Transmitter Regulators Association for money
31 transmission licensing and supervision;
- 32 (19) "Multistate licensing process," any agreement entered into by and among state
33 regulators relating to coordinated processing of applications for money
34 transmission licenses, applications for the acquisition of control of a licensee,

- 1 control determinations, or notice and information requirements for a change of key
2 individuals;
- 3 (20) "NMLS," the Nationwide Multistate Licensing System and Registry developed by the
4 Conference of State Bank Supervisors and the American Association of Residential
5 Mortgage Regulators and owned and operated by the State Regulatory Registry,
6 LLC, or any successor or affiliated entity, for the licensing and registration of
7 persons in financial services industries;
- 8 (21) "Outstanding money transmission obligations," must be established and
9 extinguished in accordance with applicable state law and:
- 10 (a) Any payment instrument or stored value issued or sold by the licensee to a
11 person located in the United States or reported as sold by an authorized
12 delegate of the licensee to a person that is located in the United States that
13 has not yet been paid or refunded by or for the licensee, or escheated in
14 accordance with applicable abandoned property laws; or
- 15 (b) Any money received for transmission by the licensee or an authorized
16 delegate in the United States from a person located in the United States
17 that has not been received by the payee or refunded to the sender, or
18 escheated in accordance with applicable abandoned property laws;
- 19 (c) For purposes of this section, "in the United States" shall include, to the
20 extent applicable, a person in any state, territory, or possession of the
21 United States; the District of Columbia; the Commonwealth of Puerto Rico;
22 or a U.S. military installation that is located in a foreign country;
- 23 (22) "Passive investor," a person that:
- 24 (a) Does not have the power to elect a majority of key individuals or executive
25 officers, managers, directors, trustees, or other persons exercising
26 managerial authority of a person in control of a licensee;
- 27 (b) Is not employed by and does not have any managerial duties of the licensee
28 or person in control of a licensee;
- 29 (c) Does not have the power to exercise, directly or indirectly, a controlling
30 influence over the management or policies of a licensee or person in control
31 of a licensee; and
- 32 (d) Either attests to (a), (b), and (c) in a form and in a medium prescribed by
33 the director or commits to the passivity characteristics of (a), (b), and (c)
34 in a written document;

- 1 (23) "Payment instrument," a written or electronic check, draft, money order, traveler's
2 check, or other written or electronic instrument for the transmission or payment of
3 money or monetary value, whether or not negotiable. The term does not include
4 stored value or any instrument that is redeemable by the issuer only for goods or
5 services provided by the issuer or its affiliate or franchisees of the issuer or its
6 affiliate, except to the extent required by applicable law to be redeemable in cash
7 for its cash value, or is not sold to the public but issued and distributed as part of
8 a loyalty, rewards, or promotional program;
- 9 (24) "Payroll processing services," receiving money for transmission pursuant to a
10 contract with a person to deliver wages or salaries, make payment of payroll taxes
11 to state and federal agencies, make payments relating to employee benefit plans,
12 or make distributions of other authorized deductions from wages or salaries. The
13 term payroll processing services does not include an employer performing payroll
14 processing services on its own behalf or on behalf of its affiliate or a professional
15 employment organization subject to regulation under other applicable state law;
- 16 (25) "Person," any individual, general partnership, limited partnership, limited liability
17 company, corporation, trust, association, joint stock corporation, or other
18 corporate entity identified by the director;
- 19 (26) "Receiving money for transmission" or "money received for transmission,"
20 receiving money or monetary value in the United States for transmission within or
21 outside the United States by electronic or other means;
- 22 (27) "Stored value," monetary value representing a claim against the issuer evidenced
23 by an electronic or digital record and that is intended and accepted for use as a
24 means of redemption for money or monetary value or payment for goods or
25 services. The term includes, but is not limited to, "prepaid access" as defined by
26 31 C.F.R. § 1010.100 (January 1, 2024). Notwithstanding the foregoing, the term
27 "stored value" does not include a payment instrument, closed loop stored value,
28 or stored value not sold to the public but issued and distributed as part of a loyalty,
29 rewards, or promotional program; and
- 30 (28) "Tangible net worth," the aggregate assets of a licensee excluding all intangible
31 assets, less liabilities, as determined in accordance with United States generally
32 accepted accounting principles.

33 **Section 2. That chapter 51A-17 be amended with a NEW SECTION:**

34 This Act does not apply to:

- 1 (1) An operator of a payment system to the extent that it provides processing, clearing,
2 or settlement services, between or among persons exempted by this section or
3 licensees, in connection with wire transfers, credit card transactions, debit card
4 transactions, stored-value transactions, automated clearing house transfers, or
5 similar funds transfers;
- 6 (2) A person appointed as an agent of a payee to collect and process a payment from
7 a payor to the payee for goods or services, other than the money transmission
8 itself, provided to the payor by the payee, provided that:
- 9 (a) There exists a written agreement between the payee and the agent
10 directing the agent to collect and process payments from payors on the
11 payee's behalf;
- 12 (b) The payee holds the agent out to the public as accepting payments for
13 goods or services on the payee's behalf; and
- 14 (c) Payment for the goods and services is treated as received by the payee
15 upon receipt by the agent so that the payor's obligation is extinguished and
16 there is no risk of loss to the payor if the agent fails to remit the funds to
17 the payee;
- 18 (3) A person that acts as an intermediary by processing payments between an entity
19 that has directly incurred an outstanding money transmission obligation to a
20 sender, and the sender's designated recipient, provided that the entity:
- 21 (a) Is properly licensed or exempt from licensing requirements under this Act;
22 (b) Provides a receipt, electronic record, or other written confirmation to the
23 sender identifying the entity as the provider of money transmission in the
24 transaction; and
- 25 (c) Bears sole responsibility to satisfy the outstanding money transmission
26 obligation to the sender, including the obligation to make the sender whole
27 in connection with any failure to transmit the funds to the sender's
28 designated recipient;
- 29 (4) The United States, a department, agency, or instrumentality thereof, or its agent;
- 30 (5) Money transmission by the United States Postal Service or by an agent of the
31 United States Postal Service;
- 32 (6) A state, county, city, or any other governmental agency or governmental
33 subdivision or instrumentality of a state, or its agent;
- 34 (7) A federally insured depository financial institution, bank holding company, office of
35 an international banking corporation, foreign bank that establishes a federal branch

- 1 pursuant to the International Bank Act, 12 U.S.C. § 3102 (January 1, 2024),
2 corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. §§
3 1861-1867 (January 1, 2024), or corporation organized under the Edge Act, 12
4 U.S.C. §§ 611-633 (January 1, 2024);
- 5 (8) Electronic funds transfer of governmental benefits for a federal, state, county, or
6 governmental agency by a contractor on behalf of the United States or a
7 department, agency, or instrumentality thereof, or on behalf of a state or
8 governmental subdivision, agency, or instrumentality thereof;
- 9 (9) A board of trade designated as a contract market under the federal Commodity
10 Exchange Act, 7 U.S.C. §§ 1-25 (January 1, 2024), or a person that, in the ordinary
11 course of business, provides clearance and settlement services for a board of trade
12 to the extent of its operation as or for the board;
- 13 (10) A registered futures commission merchant under the federal commodities laws to
14 the extent of its operation as a merchant;
- 15 (11) A person registered as a securities broker-dealer under federal or state securities
16 laws to the extent of its operation as a broker-dealer;
- 17 (12) An individual employed by a licensee, authorized delegate, or any person exempted
18 from the licensing requirements of this Act when acting within the scope of
19 employment and under the supervision of the licensee, authorized delegate, or
20 exempted person as an employee and not as an independent contractor;
- 21 (13) A person expressly appointed as a third-party service provider to or agent of an
22 entity exempt under subdivision (7) of this section, solely to the extent that:
- 23 (a) The service provider or agent is engaging in money transmission on behalf
24 of and pursuant to a written agreement with the exempt entity that sets
25 forth the specific functions that the service provider or agent is to perform;
26 and
- 27 (b) The exempt entity assumes all risk of loss and all legal responsibility for
28 satisfying the outstanding money transmission obligations owed to
29 purchasers and holders of the outstanding money transmission obligations
30 upon receipt of the purchaser's or holder's money or monetary value by the
31 service provider or agent;
- 32 (14) A person exempt by regulation or order if the director finds the exemption to be in
33 the public interest and that the regulation of the person is not necessary for the
34 purposes of this Act; and
- 35 (15) A South Dakota chartered trust company.

1 The director may require that any person claiming to be exempt from licensing
2 pursuant to this section provide information and documentation to the director
3 demonstrating that it qualifies for any claimed exemption.

4 **Section 3. That chapter 51A-17 be amended with a NEW SECTION:**

5 (1) In order to carry out the purposes of this Act, the director may, subject to the
6 provisions of subdivisions (1) and (4) of section 4 of this Act:

7 (a) Enter into agreements or relationships with other government officials or
8 federal and state regulatory agencies and regulatory associations in order
9 to improve efficiencies and reduce regulatory burden by standardizing
10 methods or procedures, and sharing resources, records, or related
11 information obtained under this Act;

12 (b) Use, hire, contract, or employ analytical systems, methods, or software to
13 examine or investigate any person subject to this Act;

14 (c) Accept, from other state or federal government agencies or officials,
15 licensing, examination, or investigation reports made by the other state or
16 federal government agencies or officials; and

17 (d) Accept audit reports made by an independent certified public accountant or
18 other qualified third-party auditor for an applicant or licensee and
19 incorporate the audit report in any report of examination or investigation.

20 (2) The director has the broad administrative authority to administer, interpret, and
21 enforce this Act and to recover the cost of administering and enforcing this Act by
22 imposing and collecting proportionate and equitable fees and costs associated with
23 applications, examinations, investigations, and other actions required to achieve
24 the purpose of this Act.

25 **Section 4. That chapter 51A-17 be amended with a NEW SECTION:**

26 (1) Except as otherwise provided in this section, all information or reports obtained by
27 the director from an applicant, licensee, or authorized delegate and all information
28 contained in or related to an examination, investigation, operating report, or
29 condition report prepared by, on behalf of, or for the use of the director, or financial
30 statements, balance sheets, or authorized delegate information are confidential
31 and are not subject to disclosure under this state's open records law.

32 (2) The director may disclose information not otherwise subject to disclosure under
33 this section to representatives of state or federal agencies who promise in a record

1 that they will maintain the confidentiality of the information or where the director
2 finds that the release is reasonably necessary for the protection and interest of the
3 public in accordance with this state's open records law.

4 (3) This section does not prohibit the director from disclosing to the public a list of all
5 licensees or the aggregated financial or transactional data concerning those
6 licensees.

7 (4) Information contained in the records of the division that is not confidential and may
8 be made available to the public either on the division website, upon receipt by the
9 division of a written request, or in NMLS must include:

10 (a) The name, business address, telephone number, and unique identifier of a
11 licensee;

12 (b) The business address of a licensee's registered agent for service;

13 (c) The name, business address, and telephone number of all authorized
14 delegates;

15 (d) The terms of or a copy of any bond filed by a licensee, provided that
16 confidential information, including, but not limited to, prices and fees for
17 the bond is redacted; and

18 (e) Copies of any non-confidential final orders of the division relating to any
19 violation of this Act or regulations implementing this Act; and

20 (f) Imposition of a non-confidential administrative fine or penalty under this
21 Act.

22 **Section 5. That chapter 51A-17 be amended with a NEW SECTION:**

23 (1) The director may conduct an examination or investigation of a licensee or
24 authorized delegate or otherwise take independent action authorized by this Act or
25 by a rule adopted or order issued under this Act as reasonably necessary or
26 appropriate to administer and enforce this Act, regulations implementing this
27 chapter, and other applicable law, including the Bank Secrecy Act and other federal
28 and state laws pertaining to money laundering. The director may:

29 (a) Conduct an examination either on-site or off-site as the director may
30 reasonably require;

31 (b) Conduct an examination in conjunction with an examination conducted by
32 representatives of other state agencies or agencies of another state or the
33 federal government;

- 1 (c) Accept the examination report of another state agency or an agency of
2 another state or the federal government, or a report prepared by an
3 independent accounting firm, which on being accepted is considered for all
4 purposes as an official report of the director; and
- 5 (d) Summon and examine under oath a key individual or employee of a licensee
6 or authorized delegate and require the person to produce records regarding
7 any matter related to the condition and business of the licensee or
8 authorized delegate.
- 9 (2) A licensee or authorized delegate must provide, and the director must have full
10 and complete access to, all records the director may reasonably require to conduct
11 a complete examination. The records must be provided at the location and in the
12 format specified by the director, provided the director may utilize multistate record
13 production standards and examination procedures when such standards will
14 reasonably achieve the requirements of this section.
- 15 (3) Unless otherwise directed by the director, a licensee must pay all costs reasonably
16 incurred in connection with an examination of the licensee or the licensee's
17 authorized delegates.

18 **Section 6. That chapter 51A-17 be amended with a NEW SECTION:**

- 19 (1) To efficiently and effectively administer and enforce this Act and to minimize
20 regulatory burden, the director is authorized and encouraged to participate in
21 multistate supervisory processes established between states and coordinated
22 through the Conference of State Bank Supervisors, Money Transmitter Regulators
23 Association, and affiliates and successors thereof for all licensees that hold licenses
24 in this state and other states. As a participant in multistate supervision, the director
25 may:
- 26 (a) Cooperate, coordinate, and share information with other state and federal
27 regulators in accordance with section 4 of this Act;
- 28 (b) Enter into written cooperation, coordination, or information-sharing
29 contracts or agreements with organizations the membership of which is
30 made up of state or federal governmental agencies; and
- 31 (c) Cooperate, coordinate, and share information with organizations the
32 membership of which is made up of state or federal governmental agencies,
33 provided that the organizations agree in writing to maintain the

1 confidentiality and security of the shared information in accordance with
2 section 4 of this Act.

3 (2) The director may not waive, and nothing in this section constitutes a waiver of, the
4 director's authority to conduct an examination or investigation or otherwise take
5 independent action authorized by this Act or a rule adopted or order issued under
6 this Act to enforce compliance with applicable state or federal law.

7 (3) A joint examination or investigation, or acceptance of an examination or
8 investigation report, does not waive an examination assessment provided for in
9 this Act.

10 **Section 7. That chapter 51A-17 be amended with a NEW SECTION:**

11 (1) In the event state money transmission jurisdiction is conditioned on a federal law,
12 any inconsistencies between a provision of this Act and the federal law governing
13 money transmission shall be governed by the applicable federal law to the extent
14 of the inconsistency.

15 (2) In the event of any inconsistencies between this Act and a federal law that governs
16 pursuant to this section, the director may provide interpretive guidance that:

17 (a) Identifies the inconsistency; and

18 (b) Identifies the appropriate means of compliance with federal law.

19 **Section 8. That chapter 51A-17 be amended with a NEW SECTION:**

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

23 (2) This section does not apply to:

24 (a) A person that is an authorized delegate of a person licensed under this Act
25 acting within the scope of authority conferred by a written contract with the
26 licensee; or

27 (b) A person that is exempt pursuant to section 2 of this Act and does not
28 engage in money transmission outside the scope of such exemption.

29 (3) A license issued under sections 13 through 18 of this Act, inclusive, is not
30 transferable or assignable.

31 **Section 9. That chapter 51A-17 be amended with a NEW SECTION:**

- 1 (1) To establish consistent licensing between this state and other states, the director
2 is authorized and encouraged to:
- 3 (a) Implement all licensing provisions of this Act in a manner that is consistent
4 with other states that have adopted this Act or multistate licensing
5 processes; and
- 6 (b) Participate in nationwide protocols for licensing cooperation and
7 coordination among state regulators provided that such protocols are
8 consistent with this Act.
- 9 (2) In order to fulfill the purposes of this Act, the director is authorized and encouraged
10 to establish relationships or contracts with NMLS or other entities designated by
11 NMLS to enable the director to:
- 12 (a) Collect and maintain records;
13 (b) Coordinate multistate licensing processes and supervision processes;
14 (c) Process fees; and
15 (d) Facilitate communication between the division and licensees or other
16 persons subject to this Act.
- 17 (3) The director is authorized and encouraged to utilize NMLS for all aspects of licensing
18 in accordance with this Act, including, but not limited to, license applications,
19 applications for acquisitions of control, surety bonds, reporting, criminal history
20 background checks, credit checks, fee processing, and examinations.
- 21 (4) The director is authorized and encouraged to utilize NMLS forms, processes, and
22 functionalities in accordance with this Act. In the event NMLS does not provide
23 functionality, forms, or processes for a provision of this Act, the director is
24 authorized and encouraged to strive to implement the requirements in a manner
25 that facilitates uniformity with respect to licensing, supervision, reporting, and
26 regulation of licensees which are licensed in multiple jurisdictions.
- 27 (5) For the purpose of participating in the Nationwide Multistate Licensing System and
28 Registry, the director is authorized to waive or modify, in whole or in part, by rule,
29 regulation or order, any or all of the requirements and to establish new
30 requirements as reasonably necessary to participate in the Nationwide Multistate
31 Licensing System and Registry.

32 **Section 10. That chapter 51A-17 be amended with a NEW SECTION:**

- 33 (1) Applicants for a license must apply in a form and in a medium as prescribed by the
34 director. Each form must contain content as set forth by rule, regulation,

1 instruction, or procedure of the director and may be changed or updated by the
2 director in accordance with applicable law in order to carry out the purposes of this
3 Act and maintain consistency with NMLS licensing standards and practices. The
4 application must state or contain, as applicable:

5 (a) The legal name and residential and business addresses of the applicant and
6 any fictitious or trade name used by the applicant in conducting its business;

7 (b) A list of any criminal convictions of the applicant and any material litigation
8 in which the applicant has been involved in the ten-year period next
9 preceding the submission of the application;

10 (c) A description of any money transmission previously provided by the
11 applicant and the money transmission that the applicant seeks to provide
12 in this state;

13 (d) A list of the applicant's proposed authorized delegates and the locations in
14 this state where the applicant and its authorized delegates propose to
15 engage in money transmission;

16 (e) A list of other states in which the applicant is licensed to engage in money
17 transmission and any license revocations, suspensions, or other disciplinary
18 action taken against the applicant in another state;

19 (f) Information concerning any bankruptcy or receivership proceedings
20 affecting the licensee or a person in control of a licensee;

21 (g) A sample form of contract for authorized delegates, if applicable;

22 (h) A sample form of payment instrument or stored value, as applicable;

23 (i) The name and address of any federally insured depository financial
24 institution through which the applicant plans to conduct money
25 transmission; and

26 (j) Any other information the director or NMLS reasonably requires with respect
27 to the applicant.

28 (2) If an applicant is a corporation, limited liability company, partnership, or other legal
29 entity, the applicant must also provide:

30 (a) The date of the applicant's incorporation or formation and state or country
31 of incorporation or formation;

32 (b) If applicable, a certificate of good standing from the state or country in
33 which the applicant is incorporated or formed;

- 1 (c) A brief description of the structure or organization of the applicant, including
2 any parents or subsidiaries of the applicant, and whether any parents or
3 subsidiaries are publicly traded;
- 4 (d) The legal name, any fictitious or trade name, all business and residential
5 addresses, and the employment, as applicable, in the ten-year period next
6 preceding the submission of the application of each key individual and
7 person in control of the applicant;
- 8 (e) A list of any criminal convictions and material litigation in which a person in
9 control of the applicant that is not an individual has been involved in the
10 ten-year period preceding the submission of the application;
- 11 (f) A copy of audited financial statements of the applicant for the most recent
12 fiscal year and for the two-year period next preceding the submission of the
13 application or, if determined to be acceptable to the director, certified
14 unaudited financial statements for the most recent fiscal year or other
15 period acceptable to the director;
- 16 (g) A certified copy of unaudited financial statements of the applicant for the
17 most recent fiscal quarter;
- 18 (h) If the applicant is a publicly traded corporation, a copy of the most recent
19 report filed with the United States Securities and Exchange Commission
20 under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C.
21 § 78m (January 1, 2024);
- 22 (i) If the applicant is a wholly owned subsidiary of a corporation publicly traded
23 in the United States, a copy of audited financial statements for the parent
24 corporation for the most recent fiscal year or a copy of the parent
25 corporation's most recent report filed under Section 13 of the U.S. Securities
26 Exchange Act of 1934, 15 U.S.C. § 78m (January 1, 2024) or for a
27 corporation publicly traded outside the United States, a copy of similar
28 documentation filed with the regulator of the parent corporation's domicile
29 outside the United States;
- 30 (j) The name and address of the applicant's registered agent in this state; and
31 (k) Any other information the director reasonably requires with respect to the
32 applicant.
- 33 (3) Each application must be accompanied by a nonrefundable application fee not to
34 exceed five hundred dollars and a license fee not to exceed one thousand dollars.
35 The license fee must be refunded if the application is denied. The director shall

- 1 establish the application and license fees by rules promulgated pursuant to chapter
2 1-26.
3 (4) The director may waive one or more requirements of this section or permit an
4 applicant to submit other information in lieu of the required information.

5 **Section 11. That chapter 51A-17 be amended with a NEW SECTION:**

6 Any individual in control of a licensee or applicant or any individual that seeks to
7 acquire control of a licensee, or each key individual must furnish to the director through
8 NMLS the following items:

- 9 (1) The individual's fingerprints for submission to the Federal Bureau of Investigation
10 and the director for purposes of a national criminal history background check,
11 unless the person currently resides outside of the United States and has resided
12 outside of the United States for the last ten years; and
13 (2) Personal history and experience in a form and in a medium prescribed by the
14 director to obtain the following:
15 (a) An independent credit report from a consumer reporting agency unless the
16 individual does not have a Social Security number, in which case, this
17 requirement shall be waived;
18 (b) Information related to any criminal convictions or pending charges; and
19 (c) Information related to any regulatory or administrative action and any civil
20 litigation involving claims of fraud, misrepresentation, conversion,
21 mismanagement of funds, breach of fiduciary duty, or breach of contract.

22 **Section 12. That chapter 51A-17 be amended with a NEW SECTION:**

23 If any individual in control of a licensee or applicant or any individual that seeks to
24 acquire control of a licensee or each key individual has resided outside of the United States
25 at any time in the last ten years, the individual must also provide an investigative
26 background report prepared by an independent search firm that meets the following
27 requirements:

- 28 (1) At a minimum, the search firm shall:
29 (a) Demonstrate that the search firm has sufficient knowledge, resources, and
30 employs accepted and reasonable methodologies to conduct the research
31 of the background report; and
32 (b) Not be affiliated with or have an interest with the individual the search firm
33 is researching, and

1 (2) At a minimum, the investigative background report must be written in the English
2 language and must contain the following:

3 (a) If available in the individual's current jurisdiction of residency, a
4 comprehensive credit report or any equivalent information obtained or
5 generated by the independent search firm to accomplish the report,
6 including a search of the court data in the countries, provinces, states,
7 cities, towns, and contiguous areas where the individual resided and
8 worked;

9 (b) Criminal records information for the past ten years, including, but not
10 limited to, felonies, misdemeanors, or similar convictions for violations of
11 law in the countries, provinces, states, cities, towns, and contiguous areas
12 where the individual resided and worked;

13 (c) Employment history;

14 (d) Media history, including an electronic search of national and local
15 publications, wire services, and business applications; and

16 (e) Financial services-related regulatory history, including but not limited to,
17 money transmission, securities, banking, insurance, and mortgage-related
18 industries.

19 **Section 13. That chapter 51A-17 be amended with a NEW SECTION:**

20 When an application for an original license under this Act appears to include all the
21 items and addresses all of the matters that are required, the application is complete, and
22 the director must promptly notify the applicant in a record of the date on which the
23 application is determined to be complete.

24 (1) The director must approve or deny the application within one hundred twenty days
25 after the completion date; or

26 (2) If the application is not approved or denied within one hundred twenty days after
27 the completion date:

28 (a) The application is approved; and

29 (b) The license takes effect as of the first business day after expiration of the
30 one hundred twenty-day period.

31 (c) The director may for good cause extend the application period.

32 **Section 14. That chapter 51A-17 be amended with a NEW SECTION:**

1 A determination by the director that an application is complete and is accepted for
2 processing means only that the application, on its face, appears to include all of the items,
3 including the criminal background check response from the FBI, addresses all of the
4 matters that are required, and is not an assessment of the substance of the application or
5 of the sufficiency of the information provided.

6 **Section 15. That chapter 51A-17 be amended with a NEW SECTION:**

7 When an application is filed and considered complete under sections 13 and 14 of
8 this Act, the director must investigate the applicant's financial condition and responsibility,
9 financial and business experience, character, and general fitness. The director may
10 conduct an on-site investigation of the applicant, the reasonable cost of which the
11 applicant must pay. The director must issue a license to an applicant under sections 13 to
12 18, inclusive, of this Act, if the director finds that all of the following conditions have been
13 fulfilled:

- 14 (1) The applicant has complied with sections 10 to 12, inclusive, of this Act; and
15 (2) The financial condition and responsibility, financial and business experience,
16 competence, character, and general fitness of the applicant; and the competence,
17 experience, character, and general fitness of the key individuals and persons in
18 control of the applicant indicate that it is in the interest of the public to permit the
19 applicant to engage in money transmission.

20 **Section 16. That chapter 51A-17 be amended with a NEW SECTION:**

- 21 If an applicant avails itself or is otherwise subject to a multistate licensing process:
22 (1) The director is authorized and encouraged to accept the investigation results of a
23 lead investigative state for the purpose of section 15 of this Act if the lead
24 investigative state has sufficient staffing, expertise, and minimum standards; or
25 (2) If the division is a lead investigative state, the director is authorized and
26 encouraged to investigate the applicant pursuant to section 15 of this Act and the
27 timeframes established by agreement through the multistate licensing process,
28 provided, however, that in no case shall such a timeframe be noncompliant with
29 the application period in section 13 of this Act.

30 **Section 17. That chapter 51A-17 be amended with a NEW SECTION:**

1 The director shall issue a formal written notice of the denial of a license application
2 within thirty days of the decision to deny the application. The director shall set forth in the
3 notice of denial the specific reasons for the denial of the application. An applicant whose
4 application is denied by the director under this section may appeal within thirty days after
5 receipt of the written notice of the denial pursuant to chapter 1-26.

6 **Section 18. That chapter 51A-17 be amended with a NEW SECTION:**

7 The initial license term begins on the day the application is approved. The license
8 shall expire on December thirty-first of the year in which the license term began, unless
9 the initial license date is between November first and December thirty-first, in which
10 instance the initial license term runs through December thirty-first of the following year.

11 **Section 19. That chapter 51A-17 be amended with a NEW SECTION:**

- 12 (1) A license under this Act shall be renewed annually.
13 (a) The director shall establish an annual renewal fee, not to exceed one
14 thousand dollars, by rule promulgated pursuant to chapter 1-26.
15 (b) The annual renewal fee must be paid no more than sixty days before the
16 license expiration.
17 (c) The renewal term shall be for a period of one year and shall begin on
18 January first of each year after the initial license term and shall expire on
19 December thirty-first of the year the renewal term begins.
20 (2) A licensee shall submit a renewal report with the renewal fee in a form and in a
21 medium prescribed by the director. The renewal report must state or contain a
22 description of each material change in information submitted by the licensee in its
23 original license application which has not been reported to the director.
24 (3) The director for good cause may grant an extension of the renewal date.
25 (4) The director is authorized and encouraged to utilize NMLS to process license
26 renewals provided that such functionality is consistent with this section.

27 **Section 20. That chapter 51A-17 be amended with a NEW SECTION:**

28 Maintenance of License.

- 29 (1) If a licensee does not continue to meet the qualifications or satisfy the
30 requirements that apply to an applicant for a new money transmission license, the
31 director may suspend or revoke the licensee's license in accordance with the

1 procedures established by this Act or other applicable state law for the suspension
2 or revocation.

3 (2) An applicant for a money transmission license must demonstrate that it meets or
4 will meet, and a money transmission licensee must at all times meet, the
5 requirements in sections 48 to 50, inclusive, of this Act.

6 **Section 21. That chapter 51A-17 be amended with a NEW SECTION:**

7 (1) Any person, or group of persons acting in concert, seeking to acquire control of a
8 licensee must obtain the written approval of the director prior to acquiring control.
9 An individual is not deemed to acquire control of a licensee and is not subject to
10 these acquisition of control provisions when that individual becomes a key
11 individual in the ordinary course of business.

12 (2) A person, or group of persons acting in concert, seeking to acquire control of a
13 licensee must, in cooperation with the licensee:

14 (a) Submit an application in a form and in a medium prescribed by the director;
15 and

16 (b) Submit a nonrefundable fee not to exceed one thousand dollars. The
17 director shall establish the fee by rule promulgated pursuant to chapter 1-
18 26.

19 (3) Upon request, the director may permit a licensee or the person, or group of persons
20 acting in concert, to submit some or all information required by the director
21 pursuant to this section without using NMLS.

22 (4) The application required by this section shall include information required by
23 sections 11 and 12 of this Act for any new key individuals that have not previously
24 completed the requirements of sections 11 and 12 of this Act for a licensee.

25 **Section 22. That chapter 51A-17 be amended with a NEW SECTION:**

26 When an application for acquisition of control under section 21 of this Act appears
27 to include all the items and address all of the matters that are required, the application
28 shall be considered complete and the director shall promptly notify the applicant in a
29 record of the date on which the application was determined to be complete and:

30 (1) The director shall approve or deny the application within sixty days after the
31 completion date; or

32 (2) If the application is not approved or denied within sixty days after the completion
33 date:

- 1 (a) The application is approved; and
2 (b) The person, or group of persons acting in concert, are not prohibited from
3 acquiring control.
4 (3) The director may for good cause extend the application period.

5 **Section 23. That chapter 51A-17 be amended with a NEW SECTION:**

6 A determination by the director that an application for acquisition of control under
7 section 21 of this Act is complete and is accepted for processing means only that the
8 application, on its face, appears to include all of the items and address all of the matters
9 that are required, and is not an assessment of the substance of the application or of the
10 sufficiency of the information provided.

11 **Section 24. That chapter 51A-17 be amended with a NEW SECTION:**

12 When an application for acquisition of control under section 21 of this Act is filed
13 and considered complete under section 22 of this Act, the director must investigate the
14 financial condition and responsibility, financial and business experience, character, and
15 general fitness of the person, or group of persons acting in concert, seeking to acquire
16 control. The director shall approve an acquisition of control pursuant to this section 21 of
17 this Act if the director finds that all of the following conditions have been fulfilled:

- 18 (1) The requirements of subdivisions (2) and (4) of section 21 of this Act have been
19 met, as applicable; and
20 (2) The financial condition and responsibility, financial and business experience,
21 competence, character, and general fitness of the person, or group of persons
22 acting in concert, seeking to acquire control; and the competence, experience,
23 character, and general fitness of the key individuals and persons that would be in
24 control of the licensee after the acquisition of control indicate that it is in the
25 interest of the public to permit the person, or group of persons acting in concert,
26 to control the licensee.

27 **Section 25. That chapter 51A-17 be amended with a NEW SECTION:**

28 If an applicant for acquisition of control under this section 21 of this Act avails itself
29 or is otherwise subject to a multistate licensing process:

- 1 (1) The director is authorized and encouraged to accept the investigation results of a
2 lead investigative state for the purpose of section 22 of this Act if the lead
3 investigative state has sufficient staffing, expertise, and minimum standards; or
4 (2) If this state is a lead investigative state, the director is authorized and encouraged
5 to investigate the applicant pursuant to section 22 of this Act and the timeframes
6 established by agreement through the multistate licensing process.

7 **Section 26. That chapter 51A-17 be amended with a NEW SECTION:**

8 The director shall issue a formal written notice of the denial of an application to
9 acquire control within thirty days of the decision to deny the application. The director must
10 set forth in the notice of denial the specific reasons for the denial of the application. An
11 applicant whose application is denied by the director under this section may appeal within
12 thirty days after receipt of the written notice of the denial pursuant to chapter 1-26.

13 **Section 27. That chapter 51A-17 be amended with a NEW SECTION:**

- 14 The requirements of subdivisions (1) and (2) of section 21 of this Act do not apply
15 to any of the following:
16 (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting
17 of the shareholders or holders of voting shares or voting interests of a licensee or
18 a person in control of a licensee;
19 (2) A person that acquires control of a licensee by devise or descent;
20 (3) A person that acquires control of a licensee as a personal representative, custodian,
21 guardian, conservator, or trustee, or as an officer appointed by a court of
22 competent jurisdiction or by operation of law;
23 (4) A person that is exempt under subdivision (7) of section 2 of this Act;
24 (5) A person that the director determines is not subject to subdivision (1) of section
25 21 of this Act based on the public interest;
26 (6) A public offering of securities of a licensee or a person in control of a licensee; or
27 (7) An internal reorganization of a person in control of the licensee where the ultimate
28 person in control of the licensee remains the same.

29 **Section 28. That chapter 51A-17 be amended with a NEW SECTION:**

30 Persons in section 27 of this Act in cooperation with the licensee shall notify the
31 director within fifteen days after the acquisition of control.

1 **Section 29. That chapter 51A-17 be amended with a NEW SECTION:**

2 (1) The requirements in subdivisions (1) and (2) of section 21 of this Act do not apply
3 to a person that has complied with and received approval to engage in money
4 transmission under this Act or was identified as a person in control in a prior
5 application filed with and approved by the director or by an MSB accredited state
6 pursuant to a multistate licensing process, provided that:

7 (a) The person has not had a license revoked or suspended or controlled a
8 licensee that has had a license revoked or suspended while the person was
9 in control of the licensee in the previous five years;

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

13 (c) The licensee to be acquired is projected to meet the requirements of
14 sections 48 to 50, inclusive, of this Act after the acquisition of control is
15 completed, and if the person acquiring control is a licensee, that licensee is
16 also projected to meet the requirements of sections 49 to 51, inclusive, of
17 this Act after the acquisition of control is completed;

18 (d) The licensee to be acquired will not implement any material changes to its
19 business plan as a result of the acquisition of control, and if the person
20 acquiring control is a licensee, that licensee also will not implement any
21 material changes to its business plan as a result of the acquisition of control;
22 and

23 (e) The person provides notice of the acquisition in cooperation with the
24 licensee and attests to subsections (a) through (d) in this section in a form
25 and in a medium prescribed by the director.

26 (2) If the notice is not disapproved within thirty days after the date on which the notice
27 was determined to be complete, the notice is deemed approved.

28 **Section 30. That chapter 51A-17 be amended with a NEW SECTION:**

29 Before filing an application for approval to acquire control of a licensee a person
30 may request in writing a determination from the director as to whether the person would
31 be considered a person in control of a licensee upon consummation of a proposed
32 transaction. If the director determines that the person would not be a person in control of

1 a licensee, the proposed person and transaction is not subject to the requirements of
2 subdivisions (1) and (2) of section 21 of this Act.

3 **Section 31. That chapter 51A-17 be amended with a NEW SECTION:**

4 If a multistate licensing process includes a determination pursuant to section 30 of
5 this Act and an applicant avails itself or is otherwise subject to the multistate licensing
6 process:

- 7 (1) The director is authorized and encouraged to accept the control determination of a
8 lead investigative state with sufficient staffing, expertise, and minimum standards
9 for the purpose of section 30 of this Act; or
10 (2) If this state is a lead investigative state, the director is authorized and encouraged
11 to investigate the applicant pursuant to section 30 of this Act and the timeframes
12 established by agreement through the multistate licensing process.

13 **Section 32. That chapter 51A-17 be amended with a NEW SECTION:**

- 14 (1) A licensee adding or replacing any key individual must:
15 (a) Provide notice in a manner prescribed by the director within fifteen days
16 after the effective date of the key individual's appointment; and
17 (b) Provide information as required by sections 11 and 12 of this Act within
18 forty-five days of the effective date.
19 (2) Within ninety days of the date on which the notice provided pursuant to this section
20 was determined to be complete, the director may issue a notice of disapproval of
21 a key individual if the competence, experience, character, or integrity of the
22 individual would not be in the best interests of the public or the customers of the
23 licensee to permit the individual to be a key individual of such licensee.
24 (3) A notice of disapproval must contain a statement of the basis for disapproval and
25 shall be sent to the licensee and the disapproved individual. A licensee may appeal
26 a notice of disapproval pursuant chapter 1-26 within thirty days of receipt of such
27 notice of disapproval.
28 (4) If the notice provided pursuant to this section is not disapproved within ninety days
29 after the date on which the notice was determined to be complete, the key
30 individual is deemed approved.
31 (5) If a multistate licensing process includes a key individual notice review and
32 disapproval process pursuant to this section and the licensee avails itself or is
33 otherwise subject to the multistate licensing process:

- 1 (a) The director is authorized and encouraged to accept the determination of
2 another state if the investigating state has sufficient staffing, expertise, and
3 minimum standards for the purpose of this section; or
4 (b) If this state is a lead investigative state, the director is authorized and
5 encouraged to investigate the applicant pursuant to this section and the
6 timeframes established by agreement through the multistate licensing
7 process.

8 **Section 33. That chapter 51A-17 be amended with a NEW SECTION:**

- 9 (1) Each licensee must submit a report of condition within forty-five days of the end of
10 the calendar quarter, or within any extended time as the director may prescribe.
11 (2) The report of condition must include:
12 (a) Financial information at the licensee level;
13 (b) Nationwide and state-specific money transmission transaction information
14 in every jurisdiction in the United States where the licensee is licensed to
15 engage in money transmission;
16 (c) Permissible investments report;
17 (d) Transaction destination country reporting for money received for
18 transmission, if applicable; and
19 (e) Any other information the director reasonably requires with respect to the
20 licensee. The director is authorized and encouraged to utilize NMLS for the
21 submission of the report required by subdivision (1) of this section and is
22 authorized to change or update as necessary the requirements of this
23 section to carry out the purposes of this Act and maintain consistency with
24 NMLS reporting.
25 (3) The information required by subsection 2(d) of this section shall only be included
26 in a report of condition submitted within forty-five days of the end of the fourth
27 calendar quarter.

28 **Section 34. That chapter 51A-17 be amended with a NEW SECTION:**

- 29 (1) Each licensee shall, within ninety days after the end of each fiscal year, or within
30 any extended time as the director may prescribe, file with the director:
31 (a) An audited financial statement of the licensee for the fiscal year prepared
32 in accordance with United States generally accepted accounting principles;
33 and

- 1 **(b) Any other information as the director may reasonably require.**
- 2 **(2) The audited financial statements shall be prepared by an independent certified**
- 3 **public accountant or independent public accountant who is satisfactory to the**
- 4 **director.**
- 5 **(3) The audited financial statements shall include or be accompanied by a certificate**
- 6 **of opinion of the independent certified public accountant or independent public**
- 7 **accountant that is satisfactory in form and content to the director. If the certificate**
- 8 **of opinion is qualified, the director may order the licensee to take any action as the**
- 9 **director may find necessary to enable the independent or certified public**
- 10 **accountant or independent public accountant to remove the qualification.**

11 **Section 35. That chapter 51A-17 be amended with a NEW SECTION:**

- 12 **(1) Each licensee must submit a report of authorized delegates within forty-five days**
- 13 **of the end of the calendar quarter. The director is authorized and encouraged to**
- 14 **utilize NMLS for the submission of the report required by this section provided that**
- 15 **such functionality is consistent with the requirements of this section.**
- 16 **(2) The authorized delegate report must include, at a minimum, each authorized**
- 17 **delegate's:**
- 18 **(a) Company legal name;**
- 19 **(b) Taxpayer employer identification number;**
- 20 **(c) Principal provider identifier;**
- 21 **(d) Physical address;**
- 22 **(e) Mailing address;**
- 23 **(f) Any business conducted in other states;**
- 24 **(g) Any fictitious or trade name;**
- 25 **(h) Contact person name, phone number, and email;**
- 26 **(i) Start date as licensee's authorized delegate;**
- 27 **(j) End date acting as licensee's authorized delegate, if applicable;**
- 28 **(k) Court orders pursuant to section 41 of this Act; and**
- 29 **(l) Any other information the director reasonably requires with respect to the**
- 30 **authorized delegate.**

31 **Section 36. That chapter 51A-17 be amended with a NEW SECTION:**

- 32 **(1) A licensee must file a report with the director within one business day after the**
- 33 **licensee has reason to know of the occurrence of any of the following events:**

- 1 (a) The filing of a petition by or against the licensee under the United States
 2 Bankruptcy Code, 11 U.S.C. § 101-110 (January 1, 2024) for bankruptcy or
 3 reorganization;
- 4 (b) The filing of a petition by or against the licensee for receivership, the
 5 commencement of any other judicial or administrative proceeding for its
 6 dissolution or reorganization, or the making of a general assignment for the
 7 benefit of its creditors; or
- 8 (c) The commencement of a proceeding to revoke or suspend its license in a
 9 state or country in which the licensee engages in business or is licensed.
- 10 (2) A licensee must file a report with the director within three business day after the
 11 licensee has reason to know of the occurrence of any of the following events:
- 12 (a) A charge or conviction of the licensee or of a key individual or person in
 13 control of the licensee for a felony; or
- 14 (b) A charge or conviction of an authorized delegate for a felony.

15 **Section 37. That chapter 51A-17 be amended with a NEW SECTION:**

16 A licensee and its authorized delegates must file all reports required by federal
 17 currency reporting, record keeping, and suspicious activity reporting requirements as set
 18 forth in the Bank Secrecy Act and other federal and state laws pertaining to money
 19 laundering. The timely filing of a complete and accurate report required under this section
 20 with the appropriate federal agency is deemed compliant with the requirements of this
 21 section.

22 **Section 38. That chapter 51A-17 be amended with a NEW SECTION:**

- 23 (1) Licensee shall maintain the following records, for determining its compliance with
 24 this Act for at least three years:
- 25 (a) A record of each outstanding money transmission obligation sold;
- 26 (b) A general ledger posted at least monthly containing all asset, liability,
 27 capital, income, and expense accounts;
- 28 (c) Bank statements and bank reconciliation records;
- 29 (d) Records of outstanding money transmission obligations;
- 30 (e) Records of each outstanding money transmission obligation paid within the
 31 three-year period;
- 32 (f) A list of the last known names and addresses of all of the licensee's
 33 authorized delegates; and

- 1 (g) Any other records the director reasonably requires by rule.
- 2 (2) The items specified in subdivision (1) of this section may be maintained in any form
- 3 of record.
- 4 (3) Records specified in subdivision (1) of this section may be maintained outside this
- 5 state if the records are made accessible to the director on seven business-days'
- 6 notice that is sent in a record.
- 7 (4) All records maintained by the licensee as required in this section are open to
- 8 inspection by the director pursuant to subdivision (1) of section 5 of this Act.

9 **Section 39. That chapter 51A-17 be amended with a NEW SECTION:**

- 10 (1) In this section, "remit" means to make direct payments of money to a licensee or
- 11 its representative authorized to receive money or to deposit money in a bank in an
- 12 account specified by the licensee.
- 13 (2) Before a licensee is authorized to conduct business through an authorized delegate
- 14 or allows a person to act as the licensee's authorized delegate, the licensee must:
- 15 (a) Adopt, and update as necessary, written policies and procedures reasonably
- 16 designed to ensure that the licensee's authorized delegates comply with
- 17 applicable state and federal law;
- 18 (b) Enter into a written contract that complies with subdivision (4) of this
- 19 section; and
- 20 (c) Conduct a reasonable risk-based background investigation sufficient for the
- 21 licensee to determine whether the authorized delegate has complied and
- 22 will likely comply with applicable state and federal law.
- 23 (3) An authorized delegate must operate in full compliance with this Act.
- 24 (4) The written contract required by subdivision (2) of this section must be signed by
- 25 the licensee and the authorized delegate and, at a minimum, must:
- 26 (a) Appoint the person signing the contract as the licensee's authorized
- 27 delegate with the authority to conduct money transmission on behalf of the
- 28 licensee;
- 29 (b) Set forth the nature and scope of the relationship between the licensee and
- 30 the authorized delegate and the respective rights and responsibilities of the
- 31 parties;
- 32 (c) Require the authorized delegate to agree to fully comply with all applicable
- 33 state and federal laws, rules, and regulations pertaining to money
- 34 transmission, including this Act and regulations implementing this Act,

- 1 relevant provisions of the Bank Secrecy Act and the other federal and state
2 laws pertaining to money laundering;
- 3 (d) Require the authorized delegate to remit and handle money and monetary
4 value in accordance with the terms of the contract between the licensee and
5 the authorized delegate;
- 6 (e) Impose a trust on money and monetary value net of fees received for
7 money transmission for the benefit of the licensee;
- 8 (f) Require the authorized delegate to prepare and maintain records as
9 required by this Act or regulations implementing this Act, or as reasonably
10 requested by the director;
- 11 (g) Acknowledge that the authorized delegate consents to examination or
12 investigation by the director;
- 13 (h) State that the licensee is subject to regulation by the director and that, as
14 part of that regulation, the director may suspend or revoke an authorized
15 delegate designation or require the licensee to terminate an authorized
16 delegate designation; and
- 17 (i) Acknowledge receipt of the written policies and procedures required under
18 subsection 2(a) of this section.
- 19 (5) If the licensee's license is suspended, revoked, surrendered, or expired, the
20 licensee must, within five business days, provide documentation to the director
21 that the licensee has notified all applicable authorized delegates of the licensee
22 whose names are in a record filed with the director of the suspension, revocation,
23 surrender, or expiration of a license. Upon suspension, revocation, surrender, or
24 expiration of a license, applicable authorized delegates shall immediately cease to
25 provide money transmission as an authorized delegate of the licensee.
- 26 (6) An authorized delegate of a licensee holds in trust for the benefit of the licensee
27 all money net of fees received from money transmission. If any authorized delegate
28 commingles any funds received from money transmission with any other funds or
29 property owned or controlled by the authorized delegate, all commingled funds and
30 other property shall be considered held in trust in favor of the licensee in an amount
31 equal to the amount of money net of fees received from money transmission.
- 32 (7) An authorized delegate may not use a subdelegate to conduct money transmission
33 on behalf of a licensee.

34 **Section 40. That chapter 51A-17 be amended with a NEW SECTION:**

1 A person shall not engage in the business of money transmission on behalf of a
2 person not licensed under this Act or not exempt pursuant to section 2 of this Act. A
3 person that engages in such activity, provides money transmission to the same extent as
4 if the person were a licensee, shall be jointly and severally liable with the unlicensed or
5 nonexempt person.

6 **Section 41. That chapter 51A-17 be amended with a NEW SECTION:**

7 (1) The circuit court in an action brought by a licensee shall have jurisdiction to grant
8 appropriate equitable or legal relief, including without limitation prohibiting the
9 authorized delegate from directly or indirectly acting as an authorized delegate for
10 any licensee in this state and the payment of restitution, damages, or other
11 monetary relief if the circuit court finds that an authorized delegate failed to remit
12 money in accordance with the written contract required by subdivision (2) of
13 section 39 of this Act or as otherwise directed by the licensee or required by law.

14 (2) If the circuit court issues an order prohibiting a person from acting as an authorized
15 delegate for any licensee pursuant to subdivision (1) of this section, the licensee
16 that brought the action must report the order to the director within thirty days and
17 must report the order through NMLS within ninety days.

18 (3) An authorized delegate who holds money in trust for the benefit of a licensee and
19 knowingly fails to remit more than two thousand, five hundred dollars of such
20 money is guilty of a Class 6 felony.

21 (4) An authorized delegate who holds money in trust for the benefit of a licensee and
22 knowingly fails to remit no more than two thousand, five hundred dollars of such
23 money is guilty of a Class 1 misdemeanor.

24 **Section 42. That chapter 51A-17 be amended with a NEW SECTION:**

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

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

1 **Section 43. That chapter 51A-17 be amended with a NEW SECTION:**

2 (1) This section does not apply to:

3 (a) Money received for transmission subject to the federal Remittance Rule, 12
4 C.F.R. § 1005.30 to § 1005.36, inclusive (January 1, 2024); or

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

8 (2) Every licensee shall refund to the sender within ten days of receipt of the sender's
9 written request for a refund of any and all money received for transmission unless
10 any of the following occurs:

11 (a) The money has been forwarded within ten days of the date on which the
12 money was received for transmission;

13 (b) Instructions have been given committing an equivalent amount of money
14 to the person designated by the sender within ten days of the date on which
15 the money was received for transmission;

16 (c) The agreement between the licensee and the sender instructs the licensee
17 to forward the money at a time that is beyond ten days of the date on which
18 the money was received for transmission. If funds have not yet been
19 forwarded in accordance with the terms of the agreement between the
20 licensee and the sender, the licensee shall issue a refund in accordance with
21 the other provisions of this section; or

22 (d) The refund is requested for a transaction that the licensee has not
23 completed based on a reasonable belief or a reasonable basis to believe
24 that a crime or violation of law, rule, or regulation has occurred, is
25 occurring, or may occur.

26 (e) The refund request does not enable the licensee to identify the sender's
27 name and address or telephone number or identify the particular
28 transaction to be refunded in the event the sender has multiple transactions
29 outstanding.

30 **Section 44. That chapter 51A-17 be amended with a NEW SECTION:**

31 (1) Section 45 does not apply to:

32 (a) Money received for transmission subject to the federal Remittance Rule, 12
33 C.F.R. Part 1005 Subpart B (January 1, 2024);

- 1 **(b)** Money received for transmission that is not primarily for personal, family,
 2 or household purposes;
- 3 **(c)** Money received for transmission pursuant to a written agreement between
 4 the licensee and payee to process payments for goods or services provided
 5 by the payee; or
- 6 **(d)** Payroll processing services.
- 7 **(2)** For purposes of this Act, the term "receipt" means a paper receipt, electronic
 8 record, or other written confirmation. For a transaction conducted in person, the
 9 receipt may be provided electronically if the sender requests or agrees to receive
 10 an electronic receipt. For a transaction conducted electronically or by phone, a
 11 receipt may be provided electronically. All electronic receipts shall be provided in
 12 a retainable form.

13 **Section 45. That chapter 51A-17 be amended with a NEW SECTION:**

14 Every licensee or its authorized delegate shall provide the sender a receipt for
 15 money received for transmission.

16 **(1)** The receipt shall contain the following information, as applicable:

- 17 **(a)** The name of the sender;
- 18 **(b)** The name of the designated recipient;
- 19 **(c)** The date of the transaction;
- 20 **(d)** The unique transaction or identification number;
- 21 **(e)** The name of the licensee, NMLS Unique ID, the licensee's business address,
 22 and the licensee's customer service telephone number;
- 23 **(f)** The amount of the transaction in United States dollars;
- 24 **(g)** Any fee charged by the licensee to the sender for the transaction; and
- 25 **(h)** Any taxes collected by the licensee from the sender for the transaction.

26 **(2)** The receipt required by this section must be in English and in the language
 27 principally used by the licensee or authorized delegate to advertise, solicit, or
 28 negotiate, either orally or in writing, for a transaction conducted in person,
 29 electronically, or by phone, if other than English.

30 **Section 46. That chapter 51A-17 be amended with a NEW SECTION:**

31 In addition to the contact information required in subsection (1)(e) of section 45
 32 of this Act, every licensee or authorized delegate must include on a receipt or disclose on
 33 the licensee's website or mobile application the name and phone number of the division

1 and a statement that the licensee's customers can contact the division with questions or
2 complaints about the licensee's money transmission services.

3 **Section 47. That chapter 51A-17 be amended with a NEW SECTION:**

4 (1) A licensee that provides payroll processing services must:

5 (a) Issue reports to clients detailing client payroll obligations in advance of the
6 payroll funds being deducted from an account; and

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

8 (2) Subdivision (1) of this section does not apply to a licensee providing payroll
9 processing services where the licensee's client designates the intended recipients
10 to the licensee and is responsible for providing the disclosures required by
11 subsection 1(b) of this section.

12 **Section 48. That chapter 51A-17 be amended with a NEW SECTION:**

13 (1) A licensee under this chapter must maintain at all times a tangible net worth of the
14 greater of one hundred thousand dollars or three percent of total assets for the
15 first one hundred million dollars, two percent of additional assets for one hundred
16 million dollars to one billion dollars, and one-half of one percent of additional assets
17 over one billion dollars.

18 (2) Tangible net worth must be demonstrated at initial application by the applicant's
19 most recent audited or unaudited financial statements pursuant to subsection
20 10(2)(f) of this Act.

21 (3) Notwithstanding the foregoing provisions of this section, the director shall have the
22 authority, for good cause shown, to exempt, in-part or in whole, from the
23 requirements of this section any applicant or licensee.

24 **Section 49. That chapter 51A-17 be amended with a NEW SECTION:**

25 (1) An applicant for a money transmission license must provide, and a licensee at all
26 times must maintain, security consisting of a surety bond in a form satisfactory to
27 the director or, with the director's approval, a deposit instead of a bond in
28 accordance with this section.

29 (2) The amount of the required security shall be:

30 (a) The greater of one hundred thousand dollars or an amount equal to one
31 hundred percent of the licensee's average daily money transmission liability

- 1 in this state calculated for the most recently completed three-month period,
2 up to a maximum of five hundred thousand dollars; or
3 (b) In the event that the licensee's tangible net worth exceeds ten percent of
4 total assets, the licensee shall maintain a surety bond of one hundred
5 thousand dollars.
- 6 (3) A licensee that maintains a bond in the maximum amount provided for in
7 subsection 2(a) or (b) of this section, as applicable, shall not be required to
8 calculate its average daily money transmission liability in this state for purposes of
9 this section.
- 10 (4) A licensee may exceed the maximum required bond amount pursuant to
11 subdivision (5) of section 51 of this Act.

12 **Section 50. That chapter 51A-17 be amended with a NEW SECTION:**

- 13 (1) A licensee shall maintain at all times permissible investments that have a market
14 value computed in accordance with United States generally accepted accounting
15 principles of not less than the aggregate amount of all of its outstanding money
16 transmission obligations.
- 17 (2) Except for permissible investments enumerated in section 51 of this Act, the
18 director, with respect to any licensee, may by rule or order limit the extent to which
19 a specific investment maintained by a licensee within a class of permissible
20 investments may be considered a permissible investment, if the specific investment
21 represents undue risk to customers, not reflected in the market value of
22 investments.
- 23 (3) Permissible investments, even if commingled with other assets of the licensee, are
24 held in trust for the benefit of the purchasers and holders of the licensee's
25 outstanding money transmission obligations in the event of insolvency, the filing
26 of a petition by or against the licensee under the United States Bankruptcy Code,
27 11 U.S.C. § 101 to 110 (January 1, 2024) for bankruptcy or reorganization, the
28 filing of a petition by or against the licensee for receivership, the commencement
29 of any other judicial or administrative proceeding for its dissolution or
30 reorganization, or in the event of an action by a creditor against the licensee who
31 is not a beneficiary of this statutory trust. No permissible investments impressed
32 with a trust pursuant to this section shall be subject to attachment, levy of
33 execution, or sequestration by order of any court, except for a beneficiary of this
34 statutory trust.

- 1 (4) Upon the establishment of a statutory trust in accordance with subdivision (3) of
2 this section or when any funds are drawn on a letter of credit pursuant to
3 subdivision (4) of section 51 of this Act, the director shall notify the applicable
4 regulator of each state in which the licensee is licensed to engage in money
5 transmission, if any, of the establishment of the trust or the funds drawn on the
6 letter of credit, as applicable. Notice shall be deemed satisfied if performed
7 pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of
8 credit, and any other permissible investments held in trust for the benefit of the
9 purchasers and holders of the licensee's outstanding money transmission
10 obligations, are deemed held in trust for the benefit of such purchasers and holders
11 on a pro rata and equitable basis in accordance with statutes pursuant to which
12 permissible investments are required to be held in this state, and other states, as
13 applicable. Any statutory trust established hereunder shall be terminated upon
14 extinguishment of all of the licensee's outstanding money transmission obligations.
- 15 (5) The director, by rule or by order, may allow other types of investments that the
16 director determines are of sufficient liquidity and quality to be a permissible
17 investment. The director is authorized to participate in efforts with other state
18 regulators to determine that other types of investments are of sufficient liquidity
19 and quality to be a permissible investment.

20 **Section 51. That chapter 51A-17 be amended with a NEW SECTION:**

21 The following investments are permissible under section 50 of this Act:

- 22 (1) Cash, including demand deposits, savings deposits, and funds in such accounts
23 held for the benefit of the licensee's customers in a federally-insured depository
24 financial institution, and cash equivalents, including ACH items in transit to the
25 licensee and ACH items or international wires in transit to a payee, cash in transit
26 via armored car, cash in smart safes, cash in licensee-owned locations, debit card
27 or credit card-funded transmission receivables owed by any bank, or money market
28 mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating
29 service;
- 30 (2) Certificates of deposit or senior debt obligations of an insured depository
31 institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C.
32 § 1813 (January 1, 2024) or as defined under the federal Credit Union Act, 12
33 U.S.C. § 1781 (January 1, 2024);

1 (3) An obligation of the United States or a commission, agency, or instrumentality
2 thereof; an obligation that is guaranteed fully as to principal and interest by the
3 United States; or an obligation of a state or a governmental subdivision, agency,
4 or instrumentality thereof;

5 (4) The full drawable amount of an irrevocable standby letter of credit for which the
6 stated beneficiary is the director that stipulates that the beneficiary need only draw
7 a sight draft under the letter of credit and present it to obtain funds up to the letter
8 of credit amount within seven days of presentation of the items required by section
9 54 of this Act; and

10 (5) One hundred percent of the surety bond or deposit provided for under section 49
11 of this Act that exceeds the average daily money transmission liability in this state.

12 **Section 52. That chapter 51A-17 be amended with a NEW SECTION:**

13 The letter of credit referenced in subdivision (4) of section 51 of this Act must:

14 (1) Be issued by a federally-insured depository financial institution, a foreign bank that
15 is authorized under federal law to maintain a federal agency or federal branch office
16 in a state or states, or a foreign bank that is authorized under state law to maintain
17 a branch in a state that bears an eligible rating or whose parent company bears an
18 eligible rating and is regulated, supervised, and examined by United States federal
19 or state authorities having regulatory authority over banks, credit unions, and trust
20 companies;

21 (2) Be irrevocable, unconditional, and indicate that it is not subject to any condition or
22 qualifications outside of the letter of credit;

23 (3) Not contain reference to any other agreements, documents or entities, or otherwise
24 provide for any security interest in the licensee; and

25 (4) Contain an issue date and expiration date, and expressly provide for automatic
26 extension, without a written amendment, for an additional period of one year from
27 the present or each future expiration date, unless the issuer of the letter of credit
28 notifies the director in writing by certified or registered mail or courier mail or other
29 receipted means, at least sixty days prior to any expiration date, that the
30 irrevocable letter of credit will not be extended.

31 **Section 53. That chapter 51A-17 be amended with a NEW SECTION:**

32 In the event of any notice of expiration or non-extension of a letter of credit issued
33 under subdivision (4) of section 51 of this Act, the licensee shall be required to

demonstrate to the satisfaction of the director, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with subdivision (1) of section 50 of this Act upon the expiration of the letter of credit. If the licensee is not able to do so, the director may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with subdivision (1) of section 50 of this Act. Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the director or the director's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

Section 54. That chapter 51A-17 be amended with a NEW SECTION:

The letter of credit referenced in subdivision (4) of section 51 of this Act shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(1) The original letter of credit, including any amendments; and

(2) A written statement from the beneficiary stating that any of the following events have occurred:

(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. § 101 to 110 (January 1, 2024) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

(c) The seizure of assets of a licensee by a director pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

(d) The beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with subdivision (1) of section 50 of this Act upon the expiration or non-extension of the letter of credit.

1 **Section 55. That chapter 51A-17 be amended with a NEW SECTION:**

2 The director may designate an agent to serve on the director's behalf as beneficiary
3 to a letter of credit so long as the agent and letter of credit meet requirements established
4 by the director. The director's agent may serve as agent for multiple licensing authorities
5 for a single irrevocable letter of credit if the proceeds of the drawable amount for the
6 purposes of this subdivision (4) of section 51 of this Act are assigned to the director.

7 **Section 56. That chapter 51A-17 be amended with a NEW SECTION:**

8 The director is authorized and encouraged to participate in multistate processes
9 designed to facilitate the issuance and administration of letters of credit, including, but
10 not limited to, services provided by the NMLS and State Regulatory Registry, LLC.

11 **Section 57. That chapter 51A-17 be amended with a NEW SECTION:**

12 Unless permitted by the director, by rule or by order, to exceed the limit as set
13 forth herein, the following investments are permissible under section 50 of this Act to the
14 extent specified:

15 (1) Receivables that are payable to a licensee from its authorized delegates in the
16 ordinary course of business that are less than seven days old, up to fifty percent
17 of the aggregate value of the licensee's total permissible investments;

18 (2) Of the receivables permissible under subdivision (1) of this section, receivables
19 that are payable to a licensee from a single authorized delegate in the ordinary
20 course of business may not exceed ten percent of the aggregate value of the
21 licensee's total permissible investments;

22 (3) The following investments are permissible up to twenty percent per category and
23 combined up to fifty percent of the aggregate value of the licensee's total
24 permissible investments:

25 (a) A short-term investment, an investment lasting up to six months, bearing
26 an eligible rating;

27 (b) Commercial paper bearing an eligible rating;

28 (c) A bill, note, bond, or debenture bearing an eligible rating;

29 (d) U.S. tri-party repurchase agreements collateralized at one hundred percent
30 or more with U.S. government or agency securities, municipal bonds, or
31 other securities bearing an eligible rating;

- 1 (e) Money market mutual funds rated less than "AAA" and equal to or higher
 2 than "A-" by S&P or the equivalent from any other eligible rating service;
 3 and
 4 (f) A mutual fund or other investment fund composed solely and exclusively of
 5 one or more permissible investments listed in subdivisions (1) to (3),
 6 inclusive, of section 51 of this Act;
 7 (4) Cash, including demand deposits, savings deposits, and funds in such accounts
 8 held for the benefit of the licensee's customers, at foreign depository institutions
 9 are permissible up to ten percent of the aggregate value of the licensee's total
 10 permissible investments if the licensee has received a satisfactory rating in its most
 11 recent examination and the foreign depository institution:
 12 (a) Has an eligible rating;
 13 (b) Is registered under the Foreign Account Tax Compliance Act;
 14 (c) Is not located in any country subject to sanctions from the Office of Foreign
 15 Asset Control; and
 16 (d) Is not located in a high-risk or non-cooperative jurisdiction as designated
 17 by the Financial Action Task Force.

18 **Section 58. That chapter 51A-17 be amended with a NEW SECTION:**

19 A licensee transmitting virtual currencies shall hold like-kind virtual currencies of
 20 the same volume as that held by the licensee but that is obligated to consumers, in lieu
 21 of the permissible investments otherwise required in this Act.

22 **Section 59. That chapter 51A-17 be amended with a NEW SECTION:**

- 23 (1) The director may suspend or revoke a license or order a licensee to revoke the
 24 designation of an authorized delegate if:
 25 (a) The licensee violates this Act or a rule adopted or an order issued under this
 26 Act;
 27 (b) The licensee does not cooperate with an examination or investigation by the
 28 director;
 29 (c) The licensee engages in fraud, intentional misrepresentation, or gross
 30 negligence;
 31 (d) An authorized delegate is convicted of a violation of a state or federal anti-
 32 money laundering statute, or violates a rule adopted or an order issued

- 1 under this Act, as a result of the licensee's willful misconduct or willful
2 blindness;
- 3 (e) The competence, experience, character, or general fitness of the licensee,
4 authorized delegate, person in control of a licensee, key individual, or
5 responsible person of the authorized delegate indicates that it is not in the
6 public interest to permit the person to provide money transmission;
- 7 (f) The licensee engages in an unsafe or unsound practice;
- 8 (g) The licensee is insolvent, suspends payment of its obligations, or makes a
9 general assignment for the benefit of its creditors; or
- 10 (h) The licensee does not remove an authorized delegate after the director
11 issues and serves upon the licensee a final order including a finding that the
12 authorized delegate has violated this Act.
- 13 (2) In determining whether a licensee is engaging in an unsafe or unsound practice,
14 the director may consider the size and condition of the licensee's money
15 transmission, the magnitude of the loss, the gravity of the violation of this act, and
16 the previous conduct of the person involved.

17 **Section 60. That chapter 51A-17 be amended with a NEW SECTION:**

- 18 (1) The director may issue an order suspending or revoking the designation of an
19 authorized delegate, if the director finds that:
- 20 (a) The authorized delegate violated this Act or a rule adopted or an order
21 issued under this Act;
- 22 (b) The authorized delegate did not cooperate with an examination or
23 investigation by the director;
- 24 (c) The authorized delegate engaged in fraud, intentional misrepresentation, or
25 gross negligence;
- 26 (d) The authorized delegate is convicted of a violation of a state or federal anti-
27 money laundering statute;
- 28 (e) The competence, experience, character, or general fitness of the authorized
29 delegate or a person in control of the authorized delegate indicates that it
30 is not in the public interest to permit the authorized delegate to provide
31 money transmission; or
- 32 (f) The authorized delegate is engaging in an unsafe or unsound practice.
- 33 (2) In determining whether an authorized delegate is engaging in an unsafe or unsound
34 practice, the director may consider the size and condition of the authorized

1 delegate's provision of money transmission, the magnitude of the loss, the gravity
2 of the violation of this Act or a rule adopted or order issued under this Act, and the
3 previous conduct of the authorized delegate.

4 (3) An authorized delegate may apply for relief from a suspension or revocation of
5 designation as an authorized delegate according to procedures prescribed by the
6 director.

7 **Section 61. That chapter 51A-17 be amended with a NEW SECTION:**

8 (1) If the director determines that a violation of this Act or of a rule adopted or an
9 order issued under this Act by a licensee or authorized delegate is likely to cause
10 immediate and irreparable harm to the licensee, its customers, or the public as a
11 result of the violation, or cause insolvency or significant dissipation of assets of the
12 licensee, the director may issue an order requiring the licensee or authorized
13 delegate to cease and desist from the violation. The order becomes effective upon
14 service of it upon the licensee or authorized delegate.

15 (2) The director may issue an order against a licensee to cease and desist from
16 providing money transmission through an authorized delegate that is the subject
17 of a separate order by the director.

18 (3) An order to cease and desist remains effective and enforceable pending the
19 completion of an administrative proceeding pursuant to chapter 1-26.

20 (4) A licensee or an authorized delegate that is served with an order to cease and
21 desist may petition the circuit court, for a judicial order setting aside, limiting, or
22 suspending the enforcement, operation, or effectiveness of the order pending the
23 completion of an administrative proceeding pursuant to chapter 1-26.

24 (5) An order to cease and desist expires unless the director commences an
25 administrative proceeding pursuant to chapter 1-26 within ten days after it is
26 issued.

27 **Section 62. That chapter 51A-17 be amended with a NEW SECTION:**

28 The director may enter into a consent order at any time with a person to resolve a
29 matter arising under this Act or a rule adopted or order issued under this Act. A consent
30 order must be signed by the person to whom it is issued or by the person's authorized
31 representative and must indicate agreement with the terms contained in the order. A
32 consent order may provide that it does not constitute an admission by a person that this
33 Act or a rule adopted or an order issued under this Act has been violated.

1 **Section 63. That chapter 51A-17 be amended with a NEW SECTION:**

2 (1) A person that intentionally makes a false statement, misrepresentation, or false
3 certification in a record filed or required to be maintained under this Act or that
4 intentionally makes a false entry or omits a material entry in such a record is guilty
5 of a Class 6 felony.

6 (2) A person that knowingly engages in an activity for which a license is required under
7 this Act without being licensed under this Act and who receives more than five
8 hundred dollars in compensation within a thirty-day period from this activity is
9 guilty of a Class 6 felony.

10 (3) A person that knowingly engages in an activity for which a license is required under
11 this Act without being licensed under this Act and who receives no more than five
12 hundred dollars in compensation within a thirty-day period from this activity is
13 guilty of a Class 1 misdemeanor.

14 **Section 64. That chapter 51A-17 be amended with a NEW SECTION:**

15 The director may assess a civil penalty against a person that violates this Act or a
16 rule adopted or an order issued under this Act in an amount not to exceed one thousand
17 dollars per day for each day the violation is outstanding, plus this state's costs and
18 expenses for the investigation and prosecution of the matter, including reasonable
19 attorney's fees.

20 **Section 65. That chapter 51A-17 be amended with a NEW SECTION:**

21 (1) If the director has reason to believe that a person has violated or is violating section
22 8 of this Act, the director may issue an order to show cause why an order to cease
23 and desist should not issue requiring that the person cease and desist from the
24 violation of section 8 of this Act.

25 (2) In an emergency, the director may petition the circuit court for the issuance of a
26 temporary restraining order ex parte pursuant to the rules of civil procedure.

27 (3) An order to cease and desist becomes effective upon service of it upon the person.

28 (4) An order to cease and desist remains effective and enforceable pending the
29 completion of an administrative proceeding pursuant to chapter 1-26.

30 (5) A person that is served with an order to cease and desist for violating section 8 of
31 this Act may petition the circuit court for a judicial order setting aside, limiting, or

1 suspending the enforcement, operation, or effectiveness of the order pending the
2 completion of an administrative proceeding pursuant to chapter 1-26.

3 (6) An order to cease and desist expires unless the director commences an
4 administrative proceeding within ten days after it is issued.

5 **Section 66. That chapter 51A-17 be amended with a NEW SECTION:**

6 In applying and construing this Act, consideration must be given to the need to
7 promote uniformity of the law with respect to its subject matter among states that enact
8 it.

9 **Section 67. That chapter 51A-17 be amended with a NEW SECTION:**

10 If any provision of this Act or its application to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or applications of this Act which can
12 be given effect without the invalid provision or application, and to this end, the provisions
13 of this Act are severable.

14 **Section 68. That chapter 51A-17 be amended with a NEW SECTION:**

15 (1) A person licensed in this state to engage in the business of money transmission
16 shall not be subject to the provisions of this Act, to the extent that the provisions
17 conflict with current law or establish new requirements not imposed under current
18 law, until such time as the licensee renews its current license or for six months
19 after the effective date of this Act, whichever is later.

20 (2) Notwithstanding subdivision (1) of this section, a licensee shall only be required to
21 amend its authorized delegate contracts for contracts entered into or amended
22 after the effective date or the completion of any transition period contemplated
23 under this section. Nothing herein shall be construed as limiting an authorized
24 delegate's obligations to operate in full compliance with this Act as required by
25 subdivision (3) of section 39 of this Act.

26 **Section 69. That a NEW SECTION be added to chapter 51A-17:**

27 Any person who engages in business activity regulated by this Act in the state is
28 deemed to have consented to the jurisdiction of the courts of South Dakota for all actions
29 arising under this Act.

1 **Section 70. That a NEW SECTION be added to chapter 51A-17:**

2 Any money coming into the custody of the division pursuant to this Act shall be
3 deposited with the state treasurer. The state treasurer shall credit the money to the
4 banking special revenue fund. Any expenditure of money out of the fund may only be
5 made by appropriation by the Legislature through either the General Appropriation Act or
6 a special appropriation bill. The director shall approve vouchers and the state auditor shall
7 draw warrants to pay expenditures authorized by this Act.

8 **Section 71. That a NEW SECTION be added to chapter 51A-17:**

9 The following provisions apply to the sharing of information collected and retained
10 by the director during the administration of this Act:

11

12 (1) The provisions of section 4 of this Act regarding privacy or confidentiality apply to
13 any information or material provided to the nationwide mortgage licensing system
14 and registry, and any privilege arising under federal or state law, including any rule
15 of a federal or state court, with respect to the information or material, continue to
16 apply to the information or material after the information or material has been
17 disclosed to the nationwide mortgage licensing system and registry. The
18 information and material may be shared with a state or federal regulatory official
19 who has money transmission industry oversight authority without the loss of
20 privilege or the loss of confidentiality protections by federal law or section 4 of this
21 Act; and

22 (2) No information or material that is subject to privilege or confidentiality pursuant to
23 this section is subject to:

24 (a) Disclosure under any federal or state law governing the disclosure to the
25 public of information held by an officer or an agency of the federal
26 government or the respective state; or

27 (b) Subpoena or discovery, or admission into evidence, in any private civil
28 action or administrative process, unless with respect to any privilege held
29 by the nationwide mortgage licensing system and registry regarding the
30 information or material is waived, in whole or in part, by the person to
31 whom the information or material pertains.

32 This section does not apply to the information or material relating to the
33 employment history of, and publicly adjudicated disciplinary and enforcement actions

1 against, money transmitters that is included in the nationwide mortgage licensing system
2 and registry for access by the public.

3 **Section 72. That § 51A-17-1 be REPEALED:**

4 Terms used in this chapter mean:

- 5 (1) ~~"Applicant," any person filing an application for a license under this chapter;~~
6 (2) ~~"Authorized delegate," any entity designated by the licensee under the provisions~~
7 ~~of this chapter to sell or issue payment instruments or engage in the business of~~
8 ~~transmitting money on behalf of a licensee;~~
9 (3) ~~"Controlling person," any person in control of a licensee;~~
10 (4) ~~"Director," the director of the Division of Banking;~~
11 (5) ~~"Division," the Division of Banking;~~
12 (6) ~~"Electronic instrument," any card or other tangible object for the transmission or~~
13 ~~payment of money that contains a microprocessor chip, magnetic stripe, or other~~
14 ~~means for the storage of information, that is prefunded, and for which the value is~~
15 ~~decremented upon each use. The term does not include a card or other tangible~~
16 ~~object that is redeemable by the issuer in goods or services;~~
17 (7) ~~"Executive officer," the licensee's president, chair of the executive committee,~~
18 ~~senior officer responsible for the licensee's business, chief financial officer, and any~~
19 ~~other person who performs similar functions;~~
20 (8) ~~"Key individual," any individual ultimately responsible for establishing or directing~~
21 ~~policies and procedures of the licensee, such as an executive officer, manager,~~
22 ~~director, or trustee;~~
23 (9) ~~"Key shareholder," any person, or group of persons acting in concert, who is the~~
24 ~~owner of twenty five percent or more of any voting class of an applicant's stock;~~
25 (10) ~~"Licensee," any person licensed pursuant to this chapter;~~
26 (11) ~~"Material litigation," any litigation that, according to generally accepted accounting~~
27 ~~principles, is deemed significant to an applicant's or licensee's financial health and~~
28 ~~would be required to be referenced in that entity's annual audited financial~~
29 ~~statements, report to shareholders, or similar documents;~~
30 (12) ~~"Monetary value," any medium of exchange, whether or not redeemable in money;~~
31 (13) ~~"Money transmission," engagement in the business of the sale or issuance of~~
32 ~~payment instruments or stored value or of receiving money or monetary value for~~
33 ~~transmission to a location within or outside the United States by any means;~~

- 1 ~~(14) "Nationwide mortgage licensing system and registry," a licensing system developed~~
2 ~~and maintained by the Conference of State Bank Supervisors and the American~~
3 ~~Association of Residential Mortgage Regulators for the licensing and registration of~~
4 ~~licensed mortgage loan originators and other regulated entities;~~
- 5 ~~(15) "Outstanding payment instrument," any payment instrument issued by the licensee~~
6 ~~which has been sold in the United States directly by the licensee or any payment~~
7 ~~instrument issued by the licensee which has been sold by an authorized delegate~~
8 ~~of the licensee in the United States, which has been reported to the licensee as~~
9 ~~having been sold, and which has not yet been paid by or for the licensee;~~
- 10 ~~(16) "Payment instrument," any electronic or written check, draft, money order,~~
11 ~~travelers check, or other electronic or written instrument or order for the~~
12 ~~transmission or payment of money, sold or issued to one or more persons, whether~~
13 ~~or not such instrument is negotiable. The term, payment instrument, does not~~
14 ~~include any credit card voucher, any letter of credit, or any instrument which is~~
15 ~~redeemable by the issuer in goods or services;~~
- 16 ~~(17) "Remit," either the direct payment of the funds to the licensee or its representatives~~
17 ~~authorized to receive those funds, or the deposit of the funds in a bank, credit~~
18 ~~union, savings and loan association, or other similar financial institution in an~~
19 ~~account specified by the licensee;~~
- 20 ~~(18) "Security device," any surety bond, irrevocable letter of credit, or similar security~~
21 ~~device;~~
- 22 ~~(19) "Stored value," monetary value that is evidenced by an electronic record. Stored~~
23 ~~value does not include any item that is redeemable by the issuer or its affiliates in~~
24 ~~goods or services of the issuer or its affiliates;~~
- 25 ~~(20) "Tangible net worth," aggregate assets of a licensee excluding all intangible assets,~~
26 ~~less liabilities, as determined in accordance with United States generally accepted~~
27 ~~accounting principles.~~

28 **Section 73. That § 51A-17-2 be REPEALED:**

29 ~~The following investments are permissible under § 51A-17-10:~~

- 30 ~~(1) Cash, including demand deposits, savings deposits, and funds in such accounts~~
31 ~~held for the benefit of the licensee's customers in a federally insured depository~~
32 ~~financial institution, and cash equivalents, including Automated Clearing House~~
33 ~~network items in transit to a payee, cash in transit via armored car, cash in smart~~
34 ~~safes, cash in licensee owned locations, debit card or credit card funded~~

- 1 transmission receivables owed by any bank, or money market mutual funds rated
 2 "AAA" by Standard and Poor or the equivalent from any eligible rating service;
- 3 ~~(2) Certificates of deposit or senior debt obligations of an insured depository~~
 4 ~~institution, as defined in the Federal Deposit Insurance Act, 12 U.S.C.~~
 5 ~~§ 1813(c)(3), as of January 1, 2023, or as defined under the federal Credit Union~~
 6 ~~Act, 12 U.S.C. § 1781, as of January 1, 2023;~~
- 7 ~~(3) An obligation of the United States or a commission, agency, or instrumentality~~
 8 ~~thereof; an obligation that is guaranteed fully as to principal and interest by the~~
 9 ~~United States; or an obligation of a state or a governmental subdivision, agency,~~
 10 ~~or instrumentality thereof;~~
- 11 ~~(4) The full drawable amount of an irrevocable standby letter of credit of which the~~
 12 ~~stated beneficiary is the director that stipulates that the beneficiary need only draw~~
 13 ~~a sight draft under the letter of credit and present it to obtain funds up to the letter~~
 14 ~~of credit amount within seven days of presentation of the items required by § 51A-~~
 15 ~~17-2.5;~~
- 16 ~~(5) One hundred percent of the security device or deposit provided for under § 51A-~~
 17 ~~17-8 that exceeds the average daily money transmission liability in this state.~~

18 **Section 74. That § 51A-17-2.1 be REPEALED:**

19 For purposes of this chapter, the term, control, means:

- 20 ~~(1) The power to vote, directly or indirectly, at least twenty five percent of the~~
 21 ~~outstanding voting shares or voting interests of a licensee or controlling person;~~
- 22 ~~(2) The power to elect or appoint a majority of key individuals or executive officers,~~
 23 ~~managers, directors, trustees, or other persons exercising managerial authority of~~
 24 ~~a licensee or controlling person; or~~
- 25 ~~(3) The power to exercise, directly or indirectly, a controlling influence over the~~
 26 ~~management or policies of a licensee or controlling person.~~

27 A person is presumed to exercise controlling influence when the person holds the
 28 power to vote, directly or indirectly, at least ten percent of the outstanding voting shares
 29 or voting interests of a licensee or controlling person. A person presumed to exercise
 30 controlling influence as defined by this section may rebut the presumption of control if the
 31 person is a passive investor.

32 To determine the percentage of a licensee or controlling person controlled by any
 33 other person, the person's interest must be aggregated with the interest of the person's

1 spouse, parents, children, siblings, mothers and fathers in law, sons and daughters in
 2 law, brothers and sisters in law, and any other person who shares the person's home.

3 **Section 75. That § 51A-17-2.2 be REPEALED:**

4 For purposes of this chapter, the term, passive investor, means a person that:
 5 (1) ~~Does not have the power to elect a majority of key individuals or executive officers,~~
 6 ~~managers, directors, trustees, or other persons exercising managerial authority of~~
 7 ~~a licensee or controlling person;~~
 8 (2) ~~Is not employed by and does not have any managerial duties of the licensee or~~
 9 ~~controlling person;~~
 10 (3) ~~Does not have the power to exercise, directly or indirectly, a controlling influence~~
 11 ~~over the management or policies of a licensee or controlling person; and~~
 12 (4) ~~Either:~~
 13 (a) ~~Attests to subdivisions (1), (2), and (3), in a form and in a medium~~
 14 ~~prescribed by the director; or~~
 15 (b) ~~Commits to the passivity characteristics of subdivisions (1), (2), and (3) in~~
 16 ~~a written document.~~

17 **Section 76. That § 51A-17-2.3 be REPEALED:**

18 For purposes of ~~§ 51A-17-2~~, a letter of credit must be issued by a federally insured
 19 depository financial institution, a foreign bank that is authorized under federal law to
 20 maintain a federal agency or federal branch office in a state or states, or a foreign bank
 21 that is authorized under state law to maintain a branch in a state that bears an eligible
 22 rating or whose parent company bears an eligible rating and is regulated, supervised, and
 23 examined by United States federal or state authorities having regulatory authority over
 24 banks, credit unions, and trust companies.

25 The letter of credit must be irrevocable, unconditional, and indicate that it is not
 26 subject to any condition or qualifications outside of the letter of credit. It must contain no
 27 reference to any other agreements, documents, or entities or otherwise provide for any
 28 security interest in the licensee.

29 The letter of credit must contain an issue date and expiration date and expressly
 30 provide for automatic extension, without a written amendment, for an additional period of
 31 one year from the preset or each future expiration date, unless the issuer of the letter of
 32 credit notifies the director in writing by certified or registered mail or courier mail or other

1 ~~received means, at least sixty days prior to any expiration date, that the irrevocable letter~~
2 ~~of credit will not be extended.~~

3 **Section 77. That § 51A-17-2.4 be REPEALED:**

4 ~~In the event of any notice of expiration or non-extension of a letter of credit issued~~
5 ~~under § 51A-17-2.3, the licensee shall be required to demonstrate to the satisfaction of~~
6 ~~the director, fifteen days prior to expiration, that the licensee maintains and will maintain~~
7 ~~permissible investments in accordance with § 51A-17-10 upon the expiration of the letter~~
8 ~~of credit. If the licensee is not able to do so, the director may draw on the letter of credit~~
9 ~~in an amount up to the amount necessary to meet the licensee's requirements to maintain~~
10 ~~permissible investments in accordance with § 51A-17-10. Any such draw must be offset~~
11 ~~against the licensee's outstanding money transmission obligations. The drawn funds must~~
12 ~~be held in trust by the director or the director's designated agent, to the extent authorized~~
13 ~~by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding~~
14 ~~money transmission obligations.~~

15 **Section 78. That § 51A-17-2.5 be REPEALED:**

16 ~~For purposes of § 51A-17-2.3, a letter of credit must provide that the issuer of the~~
17 ~~letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of~~
18 ~~the following documents on or prior to the expiration date of the letter of credit:~~

- 19 ~~(1) — The original letter of credit, including any amendments; and~~
20 ~~(2) — A written statement from the beneficiary stating that any of the following events~~
21 ~~have occurred:~~
- 22 ~~(a) — The filing of a petition by or against the licensee under the United States~~
23 ~~Bankruptcy Code, 11 U.S.C. §§ 101 to 110, as of January 1, 2023, for~~
24 ~~bankruptcy or reorganization;~~
 - 25 ~~(b) — The filing of a petition by or against the licensee for receivership, or the~~
26 ~~commencement of any other judicial or administrative proceeding for its~~
27 ~~dissolution or reorganization;~~
 - 28 ~~(c) — The seizure of assets of a licensee by the director pursuant to an emergency~~
29 ~~order issued in accordance with applicable law, on the basis of an action,~~
30 ~~violation, or condition that has caused or is likely to cause the insolvency of~~
31 ~~the licensee; or~~
 - 32 ~~(d) The beneficiary has received notice of expiration or non-extension of a letter of~~
33 ~~credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the~~

1 ~~licensee will maintain permissible investments in accordance with § 51A-17-10 upon the~~
2 ~~expiration or non-extension of the letter of credit.~~

3 **Section 79. That § 51A-17-2.6 be REPEALED:**

4 ~~The director may designate an agent to serve on the director's behalf as a~~
5 ~~beneficiary to a letter of credit so long as the agent and letter of credit meet the~~
6 ~~requirements established by the director. The director's agent may serve as agent for~~
7 ~~multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the~~
8 ~~drawable amount for the purposes of §§ 51A-17-2 to 51A-17-2.5, inclusive, are assigned~~
9 ~~to the director.~~

10 **Section 80. That § 51A-17-2.7 be REPEALED:**

11 ~~The director may participate in multistate processes designed to facilitate the~~
12 ~~issuance and administration of letters of credit, including services provided by the National~~
13 ~~Multistate Licensing System and State Regulatory Registry, L.L.C.~~

14 **Section 81. That § 51A-17-2.8 be REPEALED:**

15 ~~Unless permitted by the director by rule or by order to exceed the limit as set forth~~
16 ~~in this section, the following investments are permissible under § 51A-17-10 to the extent~~
17 ~~specified:~~

18 ~~(1) Receivables that are payable to a licensee from its authorized delegates in the~~
19 ~~ordinary course of business that are less than seven days old, up to fifty percent~~
20 ~~of the aggregate value of the licensee's total permissible investments. Receivables~~
21 ~~that are payable to a licensee from a single authorized delegate in the ordinary~~
22 ~~course of business may not exceed ten percent of the aggregate value of the~~
23 ~~licensee's total permissible investments;~~

24 ~~(2) The following investments are permissible up to twenty percent per category and~~
25 ~~combined up to fifty percent of the aggregate value of the licensee's total~~
26 ~~permissible investments:~~

27 ~~(a) A short term investment bearing an eligible rating. For purposes of this~~
28 ~~subsection, the term, short term investment, means an investment made~~
29 ~~in the previous six months;~~

30 ~~(b) Commercial paper bearing an eligible rating;~~

31 ~~(c) A bill, note, bond, or debenture bearing an eligible rating;~~

- 1 ~~(d) — U.S. tri-party repurchase agreements collateralized at one hundred percent~~
 2 ~~or more with U.S. government or agency securities, municipal bonds, or~~
 3 ~~other securities bearing an eligible rating;~~
 4 ~~(e) — Money market mutual funds rated less than "AAA" and equal to or higher~~
 5 ~~than "A" by Standard & Poor or the equivalent from any other eligible rating~~
 6 ~~service; and~~
 7 ~~(f) — A mutual fund or other investment fund composed solely and exclusively of~~
 8 ~~one or more permissible investments named in this section.~~
- 9 ~~(3) — Cash, including demand deposits, savings deposits, and funds in such accounts~~
 10 ~~held for the benefit of the licensee's customers, at foreign depository institutions~~
 11 ~~are permissible up to ten percent of the aggregate value of the licensee's total~~
 12 ~~permissible investments if the licensee has received a satisfactory rating in its most~~
 13 ~~recent examination, and the foreign depository institution has an eligible rating, is~~
 14 ~~registered under the Foreign Account Tax Compliance Act, is not located in any~~
 15 ~~country subject to sanctions from the Office of Foreign Asset Control, and is not~~
 16 ~~located in a high risk or non-cooperative jurisdiction as designated by the Financial~~
 17 ~~Action Task Force.~~

18 **Section 82. That § 51A-17-3 be REPEALED:**

- 19 This chapter does not apply to:
- 20 ~~(1) — The United States or any department, agency, or instrumentality thereof;~~
 21 ~~(2) — The United States Post Office;~~
 22 ~~(3) — The state or any political subdivisions thereof;~~
 23 ~~(4) — Banks, bank holding companies, credit unions, building and loan associations,~~
 24 ~~savings and loan associations, savings banks, or mutual banks organized under the~~
 25 ~~laws of any state or the United States, and any subcontractor, agent, or~~
 26 ~~independent contractor that sells payment instruments issued by any such entity~~
 27 ~~or sells such entity's money transmission services on behalf of such entity;~~
 28 ~~(5) — A South Dakota chartered trust company;~~
 29 ~~(6) — The provision of electronic transfer of government benefits for any federal, state,~~
 30 ~~or county governmental agency as defined in Federal Reserve Board Regulation E,~~
 31 ~~by a contractor for and on behalf of the United States or any department, agency,~~
 32 ~~or instrumentality thereof, or any state or any political subdivisions thereof;~~
 33 ~~(7) — An operator of a payment system to the extent that the system provides~~
 34 ~~processing, clearing, or settlement services, between or among persons excluded~~

1 ~~by this section, in connection with wire transfers, credit card transactions, debit~~
2 ~~card transactions, stored value transactions, automated clearing house transfers,~~
3 ~~or similar funds transfers; and~~

4 ~~(8) An agent appointed by a payee to collect and process payment as the agent of the~~
5 ~~payee, if the agent can demonstrate that:~~

6 ~~(a) A written agreement exists between the payee and the agent directing the~~
7 ~~agent to collect and process payments on the payee's behalf;~~

8 ~~(b) The payee holds the agent out to the public as accepting payments on the~~
9 ~~payee's behalf; and~~

10 ~~(c) Payment is treated as received by the payee upon receipt by the agent so~~
11 ~~there is no risk of loss to the individual initiating the transaction if the agent~~
12 ~~fails to remit the funds to the payee.~~

13 **Section 83. That § 51A-17-4 be REPEALED:**

14 ~~No person, other than a person who is exempt under § 51A-17-3, may engage in~~
15 ~~the business of money transmission in this state without obtaining a license in accordance~~
16 ~~with this chapter and undergoing a criminal background investigation. A person is engaged~~
17 ~~in providing money transmission if the person provides those services to residents of this~~
18 ~~state, including any person who has no physical presence in this state. Each person subject~~
19 ~~to this section shall be licensed under and maintain a unique identifier through the~~
20 ~~nationwide mortgage licensing system and registry.~~

21 **Section 84. That § 51A-17-5 be REPEALED:**

22 ~~If a licensee has a physical presence in this state, the licensee may conduct its~~
23 ~~business at one or more locations, directly or indirectly owned, or through one or more~~
24 ~~authorized delegates, or both, pursuant to the single license granted to the licensee.~~

25 ~~Any authorized delegate of a licensee, acting within the scope of authority~~
26 ~~conferred by a written contract as described in § 51A-17-31, is not required to become~~
27 ~~licensed pursuant to this chapter. However, any such authorized delegate is subject to~~
28 ~~all other relevant portions of this chapter.~~

29 **Section 85. That § 51A-17-6 be REPEALED:**

30 ~~Each licensee under this chapter shall maintain at all times a tangible net worth of~~
31 ~~the greater of one hundred thousand dollars or three percent of total assets for the first~~

1 ~~one hundred million dollars, two percent of additional assets from one hundred million~~
2 ~~dollars to one billion dollars, and one half of one percent of additional assets over one~~
3 ~~billion dollars. Tangible net worth must be demonstrated in an initial application by the~~
4 ~~applicant's most recent audited financial statement pursuant to §§ 51A-17-13(8) and 51A-~~
5 ~~17-14(5).~~

6 ~~The director has the authority to exempt, in whole or in part, any applicant or~~
7 ~~licensee from the requirements of this section for good cause.~~

8 **Section 86. That § 51A-17-7 be REPEALED:**

9 ~~Every corporate applicant, at the time of filing of an application for a license under~~
10 ~~this chapter and at all times after a license is issued, shall be in good standing in the state~~
11 ~~of its incorporation. All noncorporate applicants shall, at the time of the filing of an~~
12 ~~application for a license under this chapter and at all times after a license is issued, be~~
13 ~~registered or qualified to do business in the state.~~

14 **Section 87. That § 51A-17-8 be REPEALED:**

15 ~~Each application shall be accompanied by a security device acceptable to the~~
16 ~~director in the amount of one hundred thousand dollars. The director may increase the~~
17 ~~amount of the security device to a maximum of five hundred thousand dollars upon the~~
18 ~~basis of the impaired financial condition of a licensee, as evidenced by a reduction in net~~
19 ~~worth, financial losses, or other relevant criteria. The security device shall be in a form~~
20 ~~satisfactory to the director and shall run to the state for the benefit of any claimants~~
21 ~~against the licensee to secure the faithful performance of the obligations of the licensee~~
22 ~~with respect to the receipt, handling, transmission, and payment of money in connection~~
23 ~~with the sale and issuance of payment instruments or the transmission of money, or both.~~
24 ~~In the case of a surety bond, the aggregate liability of the surety may not exceed the~~
25 ~~principal sum of the bond. Any claimant against the licensee may bring suit directly on the~~
26 ~~security device or the director may bring suit on behalf of any claimant, either in one~~
27 ~~action or in successive actions.~~

28 ~~In lieu of a security device or of any portion of the principal thereof, as required by~~
29 ~~this section, the licensee may deposit with the director, or with such banks in this state~~
30 ~~as the licensee may designate and the director may approve, cash, interest-bearing stocks~~
31 ~~and bonds, notes, debentures, or other obligations of the United States or any agency or~~
32 ~~instrumentality thereof, or guaranteed by the United States, or of this state, or of a city,~~
33 ~~county, school district, or instrumentality of this state, or guaranteed by this state, to an~~

1 aggregate amount, based upon principal amount or market value, whichever is lower, of
2 not less than the amount of the security device or portion thereof. The securities or cash
3 shall be deposited as provided in this section and held to secure the same obligations as
4 would the security device, but the depositor is entitled to receive all interest and dividends
5 thereon, has the right, with the approval of the director, to substitute other securities for
6 those deposited, and shall be required so to do on written order of the director made for
7 good cause shown.

8 No security device may be cancelled without thirty days' written notice to the
9 director. Cancellation does not affect any liability incurred or accrued during the period
10 the security device was in effect.

11 **Section 88. That § 51A-17-9 be REPEALED:**

12 The security device shall remain in place for five years after the licensee ceases
13 money transmission operations in the state. However, the director may permit the security
14 device to be reduced or eliminated prior to that time to the extent that the amount of the
15 licensee's payment instruments outstanding in this state are reduced. The director may
16 also permit a licensee to substitute a letter of credit or other form of security device
17 acceptable to the director for the security device in place at the time the licensee ceases
18 money transmission operations in the state.

19 **Section 89. That § 51A-17-10 be REPEALED:**

20 A licensee shall maintain at all times permissible investments that have a market
21 value computed in accordance with United States generally accepted accounting principles
22 of not less than the aggregate amount of all of its outstanding money transmission
23 obligations.

24 Except for permissible investments enumerated in § 51A-17-2, the director, with
25 respect to any licensee, may limit the extent to which a specific investment maintained
26 by a licensee within a class of permissible investments may be considered a permissible
27 investment, if the specific investment represents undue risk to customers, not reflected
28 in the market value of investments.

29 Permissible investments, as provided in § 51A-17-2, even if commingled with other
30 assets of the licensee, are held in trust for the benefit of the purchasers and holders of
31 the licensee's outstanding money transmission obligations in the event of insolvency, the
32 filing of a petition by or against the licensee under the United States Bankruptcy Code, 11
33 U.S.C. §§ 101 to 110, as of January 1, 2023, for bankruptcy or reorganization, the filing

1 ~~of a petition by or against the licensee for receivership, the commencement of any other~~
2 ~~judicial or administrative proceeding for its dissolution or reorganization, or in the event~~
3 ~~of an action by a creditor against the licensee who is not a beneficiary of this statutory~~
4 ~~trust. No permissible investments impressed with a trust pursuant to this section shall be~~
5 ~~subject to attachment, levy of execution, or sequestration by order of any court, except~~
6 ~~for a beneficiary of this statutory trust.~~

7 **Section 90. That § 51A-17-10.1 be REPEALED:**

8 ~~Upon the establishment of a statutory trust in accordance with § 51A-17-10, or~~
9 ~~when any funds are drawn on a letter of credit pursuant to this section, the director shall~~
10 ~~notify the applicable regulator of each state in which the licensee is licensed to engage in~~
11 ~~money transmission, if any, of the establishment of the trust or the funds drawn on the~~
12 ~~letter of credit, as applicable. Notice is satisfied if performed pursuant to a multistate~~
13 ~~agreement or through the Nationwide Multistate Licensing System. Funds drawn on a~~
14 ~~letter of credit and any other permissible investments held in trust for the benefit of the~~
15 ~~purchasers and holders of the licensee's outstanding money transmission obligations, are~~
16 ~~deemed held in trust for the benefit of such purchasers and holders on a pro rata and~~
17 ~~equitable basis in accordance with statutes pursuant to which permissible investments are~~
18 ~~required to be held in this state and other states. Any statutory trust established under~~
19 ~~this section shall be terminated upon extinguishment of all of the licensee's outstanding~~
20 ~~money transmission obligations.~~

21 **Section 91. That § 51A-17-10.2 be REPEALED:**

22 ~~The director may allow other types of investments that the director determines are~~
23 ~~of sufficient liquidity and quality to be a permissible investment. The director is authorized~~
24 ~~to participate in efforts with other state regulators to determine that other types of~~
25 ~~investments are of sufficient liquidity and quality to be a permissible investment.~~

26 **Section 92. That § 51A-17-10.3 be REPEALED:**

27 ~~A licensee transmitting virtual currencies shall hold like-kind virtual currencies of~~
28 ~~the same volume as that held by the licensee but that is obligated to consumers, in lieu~~
29 ~~of the permissible investments otherwise required in this section.~~

30 **Section 93. That § 51A-17-11 be REPEALED:**

1 Each applicant for licensure under this chapter, except publicly traded corporations
2 and their subsidiaries, shall provide to the nationwide mortgage licensing system and
3 registry a complete set of the applicant's fingerprints for submission to the Federal Bureau
4 of Investigation and any other government agency authorized to receive fingerprints for
5 the purposes of a state, national, and international criminal history background check prior
6 to permanent licensure of the applicant. The division may require a state and federal
7 criminal history background check for any licensee who is the subject of a disciplinary
8 investigation by the division. The failure to submit or cooperate with the criminal history
9 background check under this section may result in denial of an application or revocation
10 of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or
11 the criminal history background check.

12 **Section 94. That § 51A-17-12 be REPEALED:**

13 Each application for a license under this chapter shall be made in writing on a form
14 prescribed by the director that includes:

- 15 (1) — The exact name of the applicant, the applicant's principal address, any fictitious or
16 trade name used by the applicant in the conduct of business, and the location of
17 the applicant's business records;
- 18 (2) — The history of the applicant's material litigation for the preceding five year period;
- 19 (3) — A complete set of the applicant's fingerprints and a signed waiver authorizing the
20 division to conduct a criminal history background check of the applicant;
- 21 (4) — A description of the business activities conducted by the applicant and a history of
22 operations;
- 23 (5) — A description of the business activities in which the applicant seeks to be engaged
24 in the state;
- 25 (6) — A list identifying the applicant's proposed authorized delegates in the state, if any,
26 at the time of the filing of the application;
- 27 (7) — A sample authorized delegate contract, if applicable;
- 28 (8) — A sample form of payment instrument, if applicable;
- 29 (9) — Each location at which the applicant and its authorized delegates, if any, propose
30 to conduct the licensed activities in the state; and
- 31 (10) — The name and address of the clearing bank or banks on which the applicant's
32 payment instruments will be drawn or through which the payment instruments will
33 be payable.

1 **Section 95. That § 51A-17-13 be REPEALED:**

2 In addition to the requirements of ~~§ 51A-17-12~~, an applicant that is a corporation
3 shall provide:

- 4 (1) ~~The date of the applicant's incorporation and state of incorporation;~~
5 (2) ~~A certificate of good standing from the state in which the applicant was~~
6 ~~incorporated;~~
7 (3) ~~A description of the corporate structure of the applicant, including the identity of~~
8 ~~any parent or subsidiary of the applicant, and the disclosure of whether any parent~~
9 ~~or subsidiary is publicly traded on any stock exchange;~~
10 (4) ~~The name, business and residence address, and employment history for the~~
11 ~~preceding five years of the applicant's executive officers and any officer or manager~~
12 ~~who will be in charge of the applicant's activities to be licensed;~~
13 (5) ~~The name, business and residence address, and employment history for the~~
14 ~~preceding five years of any key shareholder of the applicant;~~
15 (6) ~~The history of material litigation for the preceding five year period of every~~
16 ~~executive officer or key shareholder of the applicant;~~
17 (7) ~~A complete set of fingerprints and a signed waiver authorizing the division to~~
18 ~~conduct a criminal history background check of each executive officer or key~~
19 ~~shareholder of the applicant;~~
20 (8) ~~A copy of the applicant's most recent audited financial statement, including balance~~
21 ~~sheet, statement of income or loss, statement of changes in shareholder equity,~~
22 ~~and statement of changes in financial position, and, if available, the applicant's~~
23 ~~audited financial statements for the preceding two year period. For an applicant~~
24 ~~that is a wholly owned subsidiary of another corporation, the applicant may submit~~
25 ~~either the parent corporation's consolidated audited financial statements for the~~
26 ~~current year and for the preceding two year period, or the parent corporation's~~
27 ~~Form 10K reports filed with the United States Securities and Exchange Commission~~
28 ~~for the preceding three years in lieu of the applicant's financial statements. For an~~
29 ~~applicant that is a wholly owned subsidiary of a corporation having its principal~~
30 ~~place of business outside the United States, similar documentation filed with the~~
31 ~~parent corporation's regulator outside the United States may be submitted to~~
32 ~~satisfy the requirements of this subdivision; and~~
33 (9) ~~A copy of all filings, if any, made by the applicant with the United States Securities~~
34 ~~and Exchange Commission, or with a similar regulator in a country other than the~~
35 ~~United States, within the preceding year.~~

1 **Section 96. That § 51A-17-14 be REPEALED:**

2 ~~In addition to the requirements of § 51A-17-12, an applicant that is not a~~
3 ~~corporation shall provide:~~

4 ~~(1) The name, business and residence address, personal financial statement, and~~
5 ~~employment history for the preceding five years, of each principal of the applicant~~
6 ~~and the name, business and residence address, and employment history for the~~
7 ~~preceding five years of any other person who will be in charge of the applicant's~~
8 ~~activities to be licensed;~~

9 ~~(2) The place and date of the applicant's registration or qualification to do business in~~
10 ~~this state;~~

11 ~~(3) The history of material litigation for the preceding five year period for each~~
12 ~~individual having any ownership interest in the applicant and each person who~~
13 ~~exercises supervisory responsibility with respect to the applicant's business~~
14 ~~activities;~~

15 ~~(4) A complete set of fingerprints and a signed waiver authorizing the division to~~
16 ~~conduct a criminal history background check for each person having any ownership~~
17 ~~interest in the applicant and each person who exercises supervisory responsibility~~
18 ~~with respect to the applicant's business activities; and~~

19 ~~(5) A copy of the applicant's audited financial statements, including balance sheet,~~
20 ~~statement of income or loss, and statement of changes in financial position, for the~~
21 ~~current year and, if available, for the preceding two year period.~~

22 **Section 97. That § 51A-17-15 be REPEALED:**

23 ~~The director may, for good cause shown, waive any requirement with respect to~~
24 ~~any license application or permit a license applicant to submit substituted information in~~
25 ~~its license application in lieu of the information required. The director may, if the~~
26 ~~circumstances dictate, require an applicant to provide additional information with respect~~
27 ~~to any license application.~~

28 **Section 98. That § 51A-17-16 be REPEALED:**

29 ~~Each application shall be accompanied by a nonrefundable application fee not to~~
30 ~~exceed five hundred dollars and a licensee fee not to exceed one thousand dollars. The~~
31 ~~license fee shall be refunded if the application is denied. The director shall establish the~~
32 ~~application and license fees by rules promulgated pursuant to chapter 1-26.~~

1 **Section 99. That § 51A-17-17 be REPEALED:**

2 Upon receiving a complete application, the director shall investigate the financial
3 condition and responsibility, financial and business experience, character, and general
4 fitness of the applicant. The director may conduct an on-site investigation of the applicant,
5 the reasonable cost of which shall be paid by the applicant. If the director finds that the
6 applicant's business will be conducted honestly, fairly, and in a manner commanding the
7 confidence and trust of the community and that the applicant has fulfilled the requirements
8 imposed by this chapter and has paid the required license fee, the director shall issue a
9 license to the applicant authorizing the applicant to engage in the licensed activities in this
10 state until the license expires on the following January first. If these requirements have
11 not been met, the director shall deny the application in writing setting forth the reasons
12 for the denial.

13 **Section 100. That § 51A-17-18 be REPEALED:**

14 Any applicant aggrieved by a denial issued by the director under this chapter may,
15 at any time within thirty days from the date of written notice of the denial, request a
16 hearing pursuant to chapter 1-26. Any request for hearing shall be made in writing and
17 postmarked within the thirty-day period if sent by way of United States postal mail or
18 actually received by the division within the thirty-day period if sent by way of electronic
19 mail or facsimile.

20 **Section 101. That § 51A-17-19 be REPEALED:**

21 A licensee shall pay an annual renewal fee not to exceed one thousand dollars. The
22 director shall establish the renewal fee by rules promulgated pursuant to chapter 1-26.
23 The renewal fee shall be accompanied by a report, in a form prescribed by the director,
24 which shall include:

- 25 (1) — A copy of its most recent audited consolidated annual financial statement, including
26 balance sheet, statement of income or loss, statement of changes in shareholder's
27 equity, and statement of changes in financial position, or, in the case of a licensee
28 that is a wholly owned subsidiary of another corporation, the consolidated audited
29 annual financial statement of the parent corporation may be filed in lieu of the
30 licensee's audited annual financial statement;
- 31 (2) — The licensee shall provide the number of payment instruments sold by the licensee
32 in the state, the dollar amount of those instruments, and the dollar amount of

- 1 ~~those instruments currently outstanding, for the calendar year or fiscal year~~
 2 ~~immediately preceding the renewal period, or as much of this information as is~~
 3 ~~available at the time of filing the renewal application;~~
 4 ~~(3) Any material changes to any of the information submitted by the licensee on its~~
 5 ~~original application which have not previously been reported to the director on any~~
 6 ~~other report required to be filed under this chapter;~~
 7 ~~(4) A list of the licensee's permissible investments; and~~
 8 ~~(5) A list of the locations, if any, within this state at which business regulated by this~~
 9 ~~chapter is being conducted by either the licensee or its authorized delegates.~~

10 **Section 102. That § 51A-17-20 be REPEALED:**

11 ~~Any application for renewal of a license in accordance with this chapter shall be~~
 12 ~~filed with the director by December first and shall be accompanied by a fee and report as~~
 13 ~~required under § 51A-17-19. Any application for renewal filed with the director after~~
 14 ~~December first and before January first of the next calendar year is subject to the renewal~~
 15 ~~fee and a late fee equal to twenty five percent of the renewal fee. The director may not~~
 16 ~~issue a license for any application for renewal filed after December thirty first unless an~~
 17 ~~application is filed in accordance with § 51A-17-12.~~

18 **Section 103. That § 51A-17-21 be REPEALED:**

19 ~~A licensee's responsibility to any person for a money transmission conducted on~~
 20 ~~that person's behalf by the licensee or the licensee's authorized delegate is limited to the~~
 21 ~~amount of money transmitted or the face amount of the payment instrument or stored~~
 22 ~~value purchased.~~

23 **Section 104. That § 51A-17-22 be REPEALED:**

24 ~~Within fifteen business days of the occurrence of any one of the events listed in~~
 25 ~~this section, a licensee shall electronically file an amendment or an advance change notice~~
 26 ~~through the nationwide mortgage licensing system and registry describing the event and~~
 27 ~~its expected impact on the licensee's activities in the state. The events include:~~
 28 ~~(1) Any material changes in information provided in a licensee's application or renewal~~
 29 ~~report;~~
 30 ~~(2) The filing for bankruptcy or reorganization by the licensee;~~

- 1 ~~(3) The institution of revocation or suspension proceedings against the licensee by any~~
2 ~~state or governmental authority with regard to the licensees' money transmission~~
3 ~~activities;~~
- 4 ~~(4) Any felony indictment of the licensee or any of its executive officers, key individuals,~~
5 ~~or directors related to money transmission activities; and~~
- 6 ~~(5) Any felony conviction of the licensee or any of its executive officers, key individuals,~~
7 ~~or directors related to money transmission activities.~~

8 **Section 105. That § 51A-17-22.1 be REPEALED:**

9 ~~A licensee adding or replacing any key individual shall provide notice in a manner~~
10 ~~prescribed by the director within fifteen days after the effective date of the key individual's~~
11 ~~appointment and provide information as required by §§ 51A 17 12, 51A 17 13, and 51A~~
12 ~~17 14 within forty five days of the effective date.~~

13 **Section 106. That § 51A-17-22.2 be REPEALED:**

14 ~~Within ninety days of the date on which the notice provided pursuant to § 51A 17~~
15 ~~23 was determined to be complete, the director may issue a notice of disapproval of a key~~
16 ~~individual if the competence, experience, character, or integrity of the individual would~~
17 ~~not be in the best interests of the public or the customers of the licensee to permit the~~
18 ~~individual to be a key individual of such licensee. The key individual is deemed approved~~
19 ~~if not disapproved within ninety days after the date on which the notice was determined~~
20 ~~to be complete.~~

21 ~~A notice of disapproval shall contain a statement of the basis for disapproval and~~
22 ~~shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice~~
23 ~~of disapproval pursuant to chapter 1 26 after receipt of such notice of disapproval.~~

24 **Section 107. That § 51A-17-22.3 be REPEALED:**

25 ~~If a multistate licensing process includes a key individual notice review and~~
26 ~~disapproval process pursuant to § 51A 17 23 and the licensee avails itself or is otherwise~~
27 ~~subject to the multistate licensing process, the director is authorized and encouraged to~~
28 ~~accept the determination of another state if the investigating state has sufficient staffing,~~
29 ~~expertise, and minimum standards for the purposes of § 51A 17 23. If South Dakota is~~
30 ~~the lead investigative state, the director is authorized and encouraged to investigate the~~

1 applicant pursuant to ~~§ 51A-17-23~~ and the timeframes established by agreement through
2 the multistate licensing process.

3 **Section 108. That § 51A-17-23 be REPEALED:**

4 A licensee shall electronically file an advance change notice through the nationwide
5 mortgage licensing system and registry of a proposed change of control within fifteen days
6 after learning of the proposed change of control and request approval of the acquisition.
7 After review of a request for approval, the director may require the licensee to provide
8 additional information concerning the proposed persons in control of the licensee. The
9 additional information is limited to the same types required of the licensee or persons in
10 control of the licensee as part of its original license or renewal application. The director
11 shall approve a request for change of control if, after investigation, the director determines
12 that the person or group of persons requesting approval has the competence, experience,
13 character, and general fitness to operate the licensee or person in control of the licensee
14 in a lawful and proper manner and that the interests of the public will not be jeopardized
15 by the change of control.

16 **Section 109. That § 51A-17-24 be REPEALED:**

17 The following persons are exempt from the requirements of ~~§ 51A-17-23~~, but the
18 licensee shall notify the director of any such change of control:

- 19 (1) ~~— A person that acts as a proxy for the sole purpose of voting at a designated meeting~~
20 ~~of the security holders or holders of voting interests of a licensee or person in~~
21 ~~control of a licensee;~~
22 (2) ~~— A person that acquires control of a licensee by devise or descent;~~
23 (3) ~~— A person that acquires control as a personal representative, custodian, guardian,~~
24 ~~conservator, or trustee, or as an officer appointed by a court of competent~~
25 ~~jurisdiction or by operation of law; and~~
26 (4) ~~— A person that the director by rule or order exempts in the public interest.~~

27 **Section 110. That § 51A-17-25 be REPEALED:**

28 ~~Section 51A-17-23 does not apply to public offerings of securities.~~

29 **Section 111. That § 51A-17-26 be REPEALED:**

1 ~~Before filing a request for approval to acquire control, a person may request in~~
2 ~~writing a determination from the director as to whether the person would be considered a~~
3 ~~person in control of a licensee upon consummation of a proposed transaction. If the~~
4 ~~director determines that the person would not be a person in control of a licensee, the~~
5 ~~director shall enter an order to that effect and the proposed person and transaction is not~~
6 ~~subject to the requirements of § 51A-17-23.~~

7 **Section 112. That § 51A-17-27 be REPEALED:**

8 ~~The director may conduct an examination or investigation of a licensee or~~
9 ~~authorized delegate or otherwise take independent action authorized by this chapter, rule~~
10 ~~adopted under this chapter and promulgated pursuant to chapter 1-26, or order issued~~
11 ~~under this chapter that is reasonably necessary to administer and enforce this chapter,~~
12 ~~rules adopted under this chapter and promulgated pursuant to chapter 1-26, and other~~
13 ~~applicable law. The director may:~~

- 14 ~~(1) Conduct an examination either on site or off site;~~
15 ~~(2) Conduct an examination in conjunction with an examination conducted by~~
16 ~~representatives of another state agency, an agency of another state, or the federal~~
17 ~~government;~~
18 ~~(3) Accept the examination report of another state agency, agency of another state,~~
19 ~~or the federal government, or a report prepared by an independent accounting~~
20 ~~firm. A report accepted under this subdivision is considered an official report of the~~
21 ~~director; and~~
22 ~~(4) Summon and examine, under oath, a key individual, employee of a licensee, or~~
23 ~~authorized delegate and require the individual, employee, or delegate to produce~~
24 ~~records regarding any matter related to the condition and business of the licensee~~
25 ~~or authorized delegate.~~

26 ~~A licensee or authorized delegate shall provide, and the director must have full and~~
27 ~~complete access to, all records the director may reasonably require to conduct a complete~~
28 ~~examination. The records must be provided at the location and in the format specified by~~
29 ~~the director. The director may utilize multistate record production standards and~~
30 ~~examination procedures when the standards will reasonably achieve the requirements of~~
31 ~~this section.~~

32 ~~Unless otherwise directed by the director, a licensee shall pay all costs reasonably~~
33 ~~incurred in connection with an examination of the licensee or the licensee's authorized~~
34 ~~delegates.~~

1 **Section 113. That § 51A-17-28 be REPEALED:**

2 ~~The director may request financial data from a licensee in addition to that required~~
3 ~~under § 51A-17-19, or conduct an examination of any authorized delegate or location of~~
4 ~~a licensee within this state without prior notice to the authorized delegate or licensee only~~
5 ~~if the director has a reasonable basis to believe that the licensee or authorized delegate~~
6 ~~is in noncompliance with this chapter. If the director examines an authorized delegate's~~
7 ~~operations, the authorized delegate shall pay all reasonably incurred costs of such~~
8 ~~examination. If the director examines a licensee's location within the state, the licensee~~
9 ~~shall pay all reasonably incurred costs of such examination.~~

10 **Section 114. That § 51A-17-29 be REPEALED:**

11 ~~Each licensee shall make, keep, and preserve the following books, accounts, and~~
12 ~~other records for a period of three years and which shall be open to inspection by the~~
13 ~~director:~~

- 14 ~~(1) — A record or records of each payment instrument and stored value sold;~~
15 ~~(2) — A general ledger, which general ledger shall be posted at least monthly, containing~~
16 ~~all assets, liabilities, capital, income, and expense accounts;~~
17 ~~(3) — Bank statements and bank reconciliation records;~~
18 ~~(4) — Records of outstanding payment instruments and stored value;~~
19 ~~(5) — Records of each payment instrument and stored value paid within the three-year~~
20 ~~period;~~
21 ~~(6) — A list of the names and addresses of all of the licensee's authorized delegates; and~~
22 ~~(7) — Any other records the director reasonably requires by rule promulgated pursuant~~
23 ~~to chapter 1-26.~~

24 ~~Maintenance of such documents as are required by this section in a photographic,~~
25 ~~electronic, or other similar form constitutes compliance with this section. Records may be~~
26 ~~maintained at a location other than within this state if they are made accessible to the~~
27 ~~director on seven business days written notice.~~

28 **Section 115. That § 51A-17-30 be REPEALED:**

29 ~~All information or reports obtained by the director from an applicant, licensee, or~~
30 ~~authorized delegate, whether obtained through reports, applications, examination, audits,~~
31 ~~investigation, or otherwise, including all information contained in or related to~~
32 ~~examination, investigation, operating, or condition reports prepared by, on behalf of, or~~

1 ~~for the use of the director, or financial statements, balance sheets, or authorized delegate~~
2 ~~information, are confidential. However, the director may disclose confidential information~~
3 ~~to officials and examiners of other state or federal regulatory authorities or to appropriate~~
4 ~~prosecuting attorneys.~~

5 ~~This section does not prohibit the director from disclosing to the public a list of~~
6 ~~persons licensed under this chapter or the aggregated financial data on those licensees.~~

7 **Section 116. That § 51A-17-31 be REPEALED:**

8 ~~Any licensee desiring to conduct licensed activities through an authorized delegate~~
9 ~~shall authorize each delegate to operate pursuant to an express written contract. Any such~~
10 ~~contract entered into after July 1, 2008, shall provide the following:~~

- 11 ~~(1) That the licensee appoints the person as its delegate with authority to engage in~~
12 ~~money transmission on behalf of the licensee;~~
13 ~~(2) That neither a licensee nor an authorized delegate may authorize subdelegates~~
14 ~~without the written consent of the director; and~~
15 ~~(3) That licensees are subject to supervision and regulation by the director.~~

16 **Section 117. That § 51A-17-32 be REPEALED:**

17 ~~An authorized delegate shall adhere to the following standards of conduct:~~

- 18 ~~(1) No authorized delegate may make any fraudulent or false statement or~~
19 ~~misrepresentation to a licensee or to the director;~~
20 ~~(2) All money transmission or sale or issuance of payment instrument activities~~
21 ~~conducted by an authorized delegate shall be strictly in accordance with the~~
22 ~~licensee's written procedures provided to the authorized delegate;~~
23 ~~(3) An authorized delegate shall remit all money owing to the licensee in accordance~~
24 ~~with the terms of the contract between the licensee and the authorized delegate.~~
25 ~~The failure of an authorized delegate to remit all money owing to a licensee within~~
26 ~~the time presented shall result in liability of the authorized delegate to the licensee~~
27 ~~for the licensee's actual damages. The director may establish, by rules promulgated~~
28 ~~pursuant to chapter 1-26, the maximum remittance time;~~
29 ~~(4) An authorized delegate is deemed to consent to the director's inspection, with or~~
30 ~~without prior notice to the licensee or authorized delegate, of the books and records~~
31 ~~of authorized delegates of the licensee if the director has a reasonable basis to~~
32 ~~believe that the licensee or authorized delegate is in noncompliance with this~~
33 ~~chapter; and~~

1 ~~(5) — An authorized delegate is under a duty to act only as authorized under the contract~~
2 ~~with the licensee. An authorized delegate who exceeds the authority grant under~~
3 ~~the contract is subject to cancellation of the contract and further disciplinary action~~
4 ~~by the director.~~

5 **Section 118. That § 51A-17-33 be REPEALED:**

6 ~~Any funds, less fees, received by an authorized delegate of a licensee from the sale~~
7 ~~or delivery of a payment instrument issued by a licensee or received by an authorized~~
8 ~~delegate for transmission shall, from the time such funds are received by such authorized~~
9 ~~delegate until such time when the funds or an equivalent amount are remitted by the~~
10 ~~authorized delegate to the licensee, constitute trust funds owned by and belonging to the~~
11 ~~licensee. If an authorized delegate commingles any such funds with any other funds or~~
12 ~~property owned or controlled by the authorized delegate, any commingled proceeds and~~
13 ~~other property shall be impressed with a trust in favor of the licensee in an amount equal~~
14 ~~to the amount of the proceeds due the licensee.~~

15 **Section 119. That § 51A-17-34 be REPEALED:**

16 ~~An authorized delegate shall report to the licensee the theft or loss of payment~~
17 ~~instruments and stored value within twenty four hours from the time the authorized~~
18 ~~delegate knew or should have known of such theft or loss.~~

19 **Section 120. That § 51A-17-35 be REPEALED:**

20 ~~The director may suspend or revoke a licensee's license if the director finds that:~~
21 ~~(1) — Any fact or condition exists that, if it had existed at the time when the licensee~~
22 ~~applied for its license, would have been grounds for denying such application;~~
23 ~~(2) — The licensee's net worth becomes inadequate and the licensee, after ten days~~
24 ~~written notice from the director, fails to take such steps as the director deems~~
25 ~~necessary to remedy such deficiency;~~
26 ~~(3) — The licensee violates any material provision of this chapter or any rule or order~~
27 ~~promulgated by the director under authority of this chapter;~~
28 ~~(4) — The licensee is convicted of a violation of a state or federal anti money laundering~~
29 ~~statute or is subject to an enforcement action for a violation of a state or federal~~
30 ~~anti money laundering statute;~~
31 ~~(5) — The licensee is conducting its business in an unsafe or unsound manner;~~

- 1 ~~(6) — The licensee is insolvent;~~
2 ~~(7) — The licensee has suspended payment of its obligations, has made an assignment~~
3 ~~for the benefit of its creditors, or has admitted in writing its inability to pay its~~
4 ~~debts as they become due;~~
5 ~~(8) — The licensee has applied for an adjudication of bankruptcy, reorganization,~~
6 ~~arrangement, or other relief under any bankruptcy;~~
7 ~~(9) — The licensee refuses to permit the director to make any examination authorized by~~
8 ~~this chapter;~~
9 ~~(10) — The licensee fails to make any report required by this chapter; or~~
10 ~~(11) — The competence, experience, character, or general fitness of the licensee indicates~~
11 ~~that it is not in the public interest to permit the licensee to conduct its business.~~

12 **Section 121. That § 51A-17-36 be REPEALED:**

13 ~~The director may issue an order suspending or revoking the designation of an~~
14 ~~authorized delegate, if the director finds that:~~

- 15 ~~(1) — The authorized delegate violated this chapter or a rule adopted or an order issued~~
16 ~~under this chapter;~~
17 ~~(2) — The authorized delegate did not cooperate with an examination or investigation by~~
18 ~~the director;~~
19 ~~(3) — The authorized delegate engages in fraud, intentional misrepresentation, or gross~~
20 ~~negligence;~~
21 ~~(4) — The authorized delegate is convicted of a violation of a state or federal anti-money~~
22 ~~laundering statute or is subject to an enforcement action for a violation of a state~~
23 ~~or federal anti-money laundering statute;~~
24 ~~(5) — The competence, experience, character, or general fitness of the authorized~~
25 ~~delegate or a person in control of the authorized delegate indicates that it is not in~~
26 ~~the public interest to permit the authorized delegate to provide money services; or~~
27 ~~(6) — The authorized delegate is engaging in an unsafe or unsound practice. In~~
28 ~~determining whether an authorized delegate is engaging in an unsafe or unsound~~
29 ~~practice, the director may consider the size and condition of the authorized~~
30 ~~delegate's provision of money services, the magnitude of the loss, the gravity of~~
31 ~~the violation of this chapter, and the previous conduct of the authorized delegate.~~
32 ~~An authorized delegate may apply for relief from a suspension or revocation of~~
33 ~~designation as an authorized delegate pursuant to chapter 1-26.~~

1 **Section 122. That § 51A-17-37 be REPEALED:**

2 ~~If the director determines that a violation of this chapter or of a rule adopted or an~~
3 ~~order issued pursuant to this chapter by a licensee or authorized delegate is likely to cause~~
4 ~~immediate and irreparable harm to the licensee, its customers, or the public as a result of~~
5 ~~the violation, or cause insolvency or significant dissipation of assets of the licensee, the~~
6 ~~director may issue an order requiring the licensee or authorized delegate to cease and~~
7 ~~desist from the violation. The director may issue an order against a licensee to cease and~~
8 ~~desist from providing money transmission services through an authorized delegate that is~~
9 ~~the subject of a separate order pursuant to § 51A-17-36. The order becomes effective~~
10 ~~upon service of it upon the licensee or authorized delegate. An order to cease and desist~~
11 ~~remains effective and enforceable pending the completion of an administrative proceeding~~
12 ~~pursuant to chapter 1-26. However, a licensee or an authorized delegate that is served~~
13 ~~with an order to cease and desist may petition the circuit court for a judicial order setting~~
14 ~~aside, limiting, or suspending the enforcement, operation, or effectiveness of the order~~
15 ~~pending the completion of an administrative proceeding pursuant to chapter 1-26.~~

16 **Section 123. That § 51A-17-38 be REPEALED:**

17 ~~The director shall commence an administrative proceeding pursuant to chapter 1-~~
18 ~~26 within twenty days after issuing an order to cease and desist. The director may apply~~
19 ~~to the circuit court for an appropriate order to protect the public interest.~~

20 **Section 124. That § 51A-17-39 be REPEALED:**

21 ~~The director may enter into a consent order at any time with a person to resolve a~~
22 ~~matter arising under this chapter. A consent order shall be signed by the person to whom~~
23 ~~it is issued or by the person's authorized representative, and shall indicate agreement with~~
24 ~~the terms contained in the order. A consent order may provide that it does not constitute~~
25 ~~an admission by a person that this chapter or a rule adopted or an order issued under this~~
26 ~~chapter has been violated.~~

27 **Section 125. That § 51A-17-40 be REPEALED:**

28 ~~The director may assess a fine against a person that violates this chapter or a rule~~
29 ~~adopted or an order issued under this chapter in an amount not to exceed five hundred~~
30 ~~dollars per day for each day the violation is outstanding, plus the state's costs and~~

1 ~~expenses for the investigation and prosecution of the matter, including reasonable~~
2 ~~attorney's fees.~~

3 **Section 126. That § 51A-17-41 be REPEALED:**

4 ~~Any person that intentionally makes a false statement, misrepresentation, or false~~
5 ~~certification in a record filed or required to be maintained under this chapter or that~~
6 ~~intentionally makes a false entry or omits a material entry in such a record is guilty of a~~
7 ~~Class 6 felony. Any person that knowingly engages in any activity for which a license is~~
8 ~~required under this chapter without being licensed under this chapter is guilty of a Class~~
9 ~~6 felony.~~

10 **Section 127. That § 51A-17-42 be REPEALED:**

11 ~~If the director has reason to believe that a person has violated or is violating § 51A-~~
12 ~~17-4, the director may issue an order to show cause why an order to cease and desist~~
13 ~~should not issue requiring that the person cease and desist from the violation of § 51A-~~
14 ~~17-4. In an emergency, the director may petition the circuit court for the issuance of a~~
15 ~~temporary restraining order. An order to cease and desist becomes effective upon service~~
16 ~~of it upon the person. An order to cease and desist remains effective and enforceable~~
17 ~~pending the completion of an administrative proceeding pursuant to chapter 1-26. A~~
18 ~~person that is served with an order to cease and desist for violating § 51A-17-4 may~~
19 ~~petition the circuit court for a judicial order setting aside, limiting, or suspending the~~
20 ~~enforcement, operation, or effectiveness of the order pending the completion of an~~
21 ~~administrative proceeding pursuant to chapter 1-26. The director shall commence an~~
22 ~~administrative proceeding within twenty days after issuing an order to cease and desist.~~

23 **Section 128. That § 51A-17-43 be REPEALED:**

24 ~~Any person who engages in business activity regulated by this chapter is deemed~~
25 ~~to have consented to the jurisdiction of the courts of South Dakota for all actions arising~~
26 ~~under this chapter.~~

27 **Section 129. That § 51A-17-45 be REPEALED:**

28 ~~No license granted pursuant to this chapter is assignable.~~

29 **Section 130. That § 51A-17-46 be REPEALED:**

1 ~~Any money coming into the custody of the division pursuant to this chapter shall~~
2 ~~be deposited with the state treasurer. The state treasurer shall credit the money to the~~
3 ~~banking special revenue fund. Any expenditure of money out of the fund may only be~~
4 ~~made by appropriation by the Legislature through either the General Appropriation Act or~~
5 ~~a special appropriation bill. The director shall approve vouchers and the state auditor shall~~
6 ~~draw warrants to pay expenditures authorized by this chapter.~~

7 **Section 131. That § 51A-17-47 be REPEALED:**

8 ~~The director may promulgate rules pursuant to chapter 1-26 to establish the~~
9 ~~process for conducting background investigations, for the conduct of examinations, the~~
10 ~~reporting of information required by this chapter, and the process for the suspension or~~
11 ~~revocation of a license issued by the division.~~

12 **Section 132. That § 51A-17-48 be REPEALED:**

13 ~~The director may use the nationwide mortgage licensing system and registry as a~~
14 ~~channeling agent for requesting information from and distributing information to the~~
15 ~~United States Department of Justice and any other state and federal regulatory official or~~
16 ~~agency with money transmission industry oversight authority as deemed necessary by the~~
17 ~~director to carry out the responsibilities of this chapter.~~

18 **Section 133. That § 51A-17-49 be REPEALED:**

19 ~~The director may establish a relationship or enter into a contract with the~~
20 ~~nationwide mortgage licensing system and registry or an entity designated by the~~
21 ~~nationwide mortgage licensing system and registry to collect and maintain records and~~
22 ~~process transaction fees or other fees related to any licensee or person subject to the~~
23 ~~provisions of this chapter.~~

24 **Section 134. That § 51A-17-50 be REPEALED:**

25 ~~The following provisions apply to the sharing of information collected and retained~~
26 ~~by the director during the administration of this chapter:~~

27 ~~(1) The provisions of § 51A-17-30 regarding privacy or confidentiality apply to any~~
28 ~~information or material provided to the nationwide mortgage licensing system and~~
29 ~~registry, and any privilege arising under federal or state law, including any rule of~~
30 ~~a federal or state court, with respect to the information or material, continue to~~

~~apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. The information and material may be shared with a state or federal regulatory official who has money transmission industry oversight authority without the loss of privilege or the loss of confidentiality protections by federal law or § 51A-17-30; and~~

~~(2) No information or material that is subject to privilege or confidentiality pursuant to this section is subject to:~~

~~(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or~~

~~(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry regarding the information or material is waived, in whole or in part, by the person to whom the information or material pertains.~~

~~This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, money transmitters that is included in the nationwide mortgage licensing system and registry for access by the public.~~

Section 135. That § 51A-17-51 be REPEALED:

~~The director may participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees in this state and other states. As a participant in multistate supervision, the director may:~~

~~(1) Cooperate, coordinate, and share information with other states and federal regulators pursuant to § 51A-17-30;~~

~~(2) Enter into written cooperation, coordination, or information sharing contracts or agreements with organizations comprised of state or federal governmental agencies; and~~

~~(3) Cooperate, coordinate, and share information with organizations comprised of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information pursuant to § 51A-17-30.~~

1 The director may not waive, and nothing in this section constitutes a waiver of, the
2 director's authority to conduct an examination, investigation, or otherwise take
3 independent action authorized by this chapter, rule adopted under this chapter, or order
4 issued under this chapter to enforce compliance with applicable state or federal law. A
5 joint examination or investigation, or acceptance of an examination or investigation
6 report, does not constitute a waiver of an examination assessment provided for in this
7 chapter.

8

AMENDED