



State of Tennessee

PUBLIC CHAPTER NO. 115

SENATE BILL NO. 268

By Johnson

Substituted for: House Bill No. 316

By Lamberth, Cochran, Bricken

AN ACT to amend Tennessee Code Annotated, Title 45, relative to the regulation of money transmitters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 7, is amended by deleting the chapter and substituting the following:

45-7-101. Short title.

This chapter is known and may be cited as the "Money Transmission Modernization Act."

45-7-102. Purpose.

It is the purpose of this chapter to:

- (1) Promote coordination among the states in all areas of regulation, licensing, and supervision to reduce regulatory burden and more effectively utilize regulator resources;
- (2) Protect the public from financial crime;
- (3) Standardize the types of activities that are subject to licensing or otherwise exempt from licensing; and
- (4) Modernize safety and soundness requirements to ensure customer funds are protected in an environment that supports innovative and competitive business practices.

45-7-103. Chapter definitions.

As used in this chapter:

- (1) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement;
- (2) "Authorized delegate" means a person that a licensee designates to engage in money transmission on behalf of the licensee;
- (3) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under this chapter for any licensee required to do so, the given periods of time are the calendar quarters ending March 31, June 30, September 30, and December 31;

(4) "Bank Secrecy Act" means the federal Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and its implementing regulations;

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

(6) "Commissioner" means the commissioner of financial institutions;

(7)(A) "Control" means the power to:

(i) Vote, directly or indirectly, at least twenty-five percent (25%) of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(ii) Elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(iii) Exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;

(B)(i) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent (10%) of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(ii) A person presumed to exercise a controlling influence as defined by this subdivision (7)(B) may rebut the presumption of control by showing that the person is a passive investor;

(C) For purposes of determining the percentage of a person controlled by another person, the person's interest is aggregated with the interest of:

(i) Any immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law; and

(ii) Any person who shares such person's home;

(8) "Department" means the department of financial institutions;

(9) "Eligible rating" means a credit rating of any of the three (3) highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers, such as "plus" or "minus" for Standard & Poor's (S&P), or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating applies when determining whether a security bears an eligible rating;

(10) "Eligible rating service" means any Nationally Recognized Statistical Rating Organization (NRSRO), as defined by the United States Securities and Exchange Commission, and any other organization designated by the commissioner;

(11) "Executive officer" means the applicant or licensee's president, chair of the executive committee, executive vice president, treasurer, chief financial officer, or any other person who performs similar functions;

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

(13) "In this state" means:

(A) For a transaction requested in person, at a physical location within this state; and

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

(14) "Individual" means a natural person;

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

(16) "Licensee" means a person licensed under this chapter;

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

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

(19) "Money":

(A) Means a medium of exchange that is authorized or adopted by the United States or issued by a foreign government; and

(B) Includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more governments;

(20) "Money transmission":

(A) Means:

(i) Selling or issuing payment instruments to a person located in this state;

(ii) Selling or issuing stored value to a person located in this state;

(iii) Receiving money for transmission from a person located in this state; or

(iv) Payroll processing services; and

(B) Does not mean the provision solely of telecommunications services or network access;

(21) "Multistate licensing process" means any agreement entered into by this state with any other state's regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals;

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

(23)(A) "Outstanding money transmission obligations," which must be established and extinguished in accordance with applicable state law, means:

(i) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the

United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or

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

(B) For purposes of this subdivision (23), "in the United States" includes, to the extent applicable, a person in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a United States military installation that is located in a foreign country;

(24) "Passive investor" means a person that:

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

(B) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(C) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(D) Attests to subdivisions (24)(A), (24)(B), and (24)(C), in a form and in a medium prescribed by the commissioner; or commits to the passivity characteristics of subdivisions (24)(A), (24)(B), and (24)(C), in a written document satisfactory to the commissioner;

(25) "Payment instrument":

(A) Means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable; and

(B) Does not mean stored value or any instrument that:

(i) Is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or

(ii) Is not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program;

(26) "Payroll processing services":

(A) Means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries; and

(B) Does not mean an employer performing payroll processing services on its own behalf or on behalf of its affiliate, or a professional employer organization registered under the Tennessee Professional Employer Organization Act, compiled in title 62, chapter 43;

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

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

(29) "Stored value":

(A) Means monetary value representing a claim against the issuer evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services;

(B) Includes, but is not limited to, "prepaid access" as defined by 31 CFR § 1010.100; and

(C) Does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program; and

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

45-7-104. Exemptions.

This chapter does not apply to:

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

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

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

(B) The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

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

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

(A) Is properly licensed or exempt from licensing requirements under this chapter;

(B) Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(C) Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient;

(4) The United States or a department, agency, or instrumentality of the United States, or its agent to the extent of its operations in such capacity;

(5) A state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent to the extent of its operations in such capacity;

(6) A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to 12 U.S.C. § 3102, corporation organized pursuant to the Bank Service Company Act (12 U.S.C. §§ 1861-1867), corporation organized under the Edge

Act (12 U.S.C. §§ 611-633), or corporation organized under the laws of a state or the United States;

(7) A trust company organized under the laws of this state;

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

(9) A board of trade designated as a contract market under the Commodity Exchange Act (7 U.S.C. §§ 1-27), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade, to the extent of its operation as or for such a board;

(10) A person registered as a futures commission merchant under 7 U.S.C. § 6f, to the extent of its operation as such a merchant;

(11) A person registered as a securities broker-dealer under 15 U.S.C. § 78o or state securities laws, to the extent of its operation as such a broker-dealer;

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

(13) A person expressly appointed as a third-party service provider to or agent of an entity exempt under subdivisions (6) or (7), solely to the extent that:

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

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

(14) Transactions governed by title 56, or the rules promulgated solely under title 56; and

(15) A person who is exempt if the commissioner finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this chapter.

45-7-105. Authority to require demonstration of exemption.

The commissioner may require that any person claiming to be exempt from licensing pursuant to § 45-7-104 provide information and documentation to the commissioner demonstrating that such person qualifies for any claimed exemption.

45-7-106. Implementation.

(a) In order to carry out the purposes of this chapter, the commissioner may, subject to § 45-7-108:

(1) Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burdens by standardizing methods or procedures, and sharing resources, records, or related information obtained under this chapter;

(2) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this chapter;

(3) Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by such other state or federal government agencies or officials;

(4) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee, and incorporate the audit report in any report of examination or investigation; and

(5) Rely on and utilize the reports referenced in subdivisions (a)(3) and (4) for any purposes deemed appropriate by the commissioner under this chapter, including for purposes of making determinations regarding applications received under this chapter.

(b) The commissioner is authorized to administer, interpret, and enforce this chapter, promulgate rules effectuating the purposes of this chapter, and to recover the cost of administering and enforcing this chapter by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of this chapter.

45-7-107. Examinations.

(a) The commissioner may conduct an examination or investigation of a licensee or authorized delegate, or otherwise take independent action authorized by this chapter or by a rule adopted or order issued under this chapter, as reasonably necessary or appropriate to administer and enforce this chapter, rules implementing this chapter, and other applicable law, including the Bank Secrecy Act and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. No. 107-56).

(b) The commissioner may:

(1) Conduct an examination either on-site or off-site as the commissioner may reasonably require;

(2) Conduct an examination in conjunction with an examination conducted by representatives of other state agencies, agencies of another state, or of the federal government;

(3) Accept the examination report of another state agency, an agency of another state, or of the federal government, or a report prepared by an independent accounting firm, which on being accepted, is considered for all purposes as an official report of the commissioner; and

(4) Summon and examine under oath a key individual, agent, or employee of a licensee, authorized delegate, or any other person concerning the condition and affairs of a licensee, and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(c) A licensee or authorized delegate shall provide, and the commissioner or the commissioner's staff shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the commissioner.

(d) At the commissioner's discretion, written notice of the examination may be provided to the licensee or authorized delegates.

(e) Upon reasonable cause, the commissioner may conduct an investigation or examination of any unlicensed person to determine whether violations of this chapter have occurred or are occurring. In conducting the examination, the commissioner has the applicable powers provided pursuant to § 45-1-107.

(f) An unlicensed person subject to the license requirements of this chapter, that is examined or investigated in accordance with this chapter, shall pay to the commissioner the reasonable and actual expenses of the investigation or examination.

(g) Prior to January 1, 2025, unless otherwise directed by the commissioner, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates. On or after January 1, 2025, the costs for an examination or investigation of licensees must be assessed pursuant to § 45-1-118(i).

45-7-108. Confidentiality.

(a) Notwithstanding any law to the contrary and except as otherwise provided in subsection (b), all information or reports obtained by the commissioner from an applicant,

licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including, but not limited to, all information contained in or related to an examination, investigation, operating report, and condition report prepared by, on behalf of, or for the use of the commissioner, or financial statements, balance sheets, and authorized delegate information, are confidential and must not be disclosed or distributed outside the department by the commissioner or any officer or employee of the department, and are not open for inspection by members of the public.

(b)(1) The commissioner may disclose confidential information in a manner the commissioner deems proper to:

(A) Local, state, or federal agencies; and

(B) The Conference of State Bank Supervisors and the Money Transmission Regulator Association; provided, that these associations have entered into confidentiality agreements with the commissioner.

(2) A licensed money transmitter is entitled to access to a copy of the report of examination on the money transmitter prepared by the commissioner or the commissioner's designee. The report of examination in the possession of a licensee remains confidential and is not subject to subpoena.

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

45-7-109. Networked supervision.

(a) To efficiently and effectively administer and enforce this chapter, the commissioner is authorized to 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 that hold licenses in this state and other states. The commissioner is authorized to:

(1) Cooperate, coordinate, and share information with other state and federal regulators in accordance with § 45-7-108;

(2) Enter into written cooperation, coordination, or information-sharing contracts or agreements with other government officials or federal and state regulatory agencies and organizations, the membership of which is made up of state or federal governmental agencies; and

(3) Cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies; provided, that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with § 45-7-108.

(b) The commissioner shall not waive, and nothing in this section constitutes a waiver of, the commissioner's authority to conduct an examination or investigation, or otherwise take independent action authorized by this chapter or a rule adopted or order issued under this chapter to enforce compliance with applicable state or federal law.

(c) A joint examination or investigation, or acceptance of an examination or investigation report, does not waive any assessment or fee provided for in this chapter.

45-7-110. License required.

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

(b) Subsection (a) does not apply to:

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

(2) A person that is exempt pursuant to § 45-7-104 and does not engage in money transmission outside the scope of such exemption.

(c) A license issued under § 45-7-115 is not transferable or assignable.

45-7-111. Consistent state licensing.

(a) To establish consistent licensing between this state and other states, the commissioner is authorized to:

(1) Implement all licensing provisions of this chapter in a manner that is consistent with other states that have adopted this chapter or multistate licensing processes; and

(2) Participate in nationwide protocols for licensing cooperation and coordination among state regulators; provided, that such protocols are consistent with this chapter.

(b) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish relationships or contracts with NMLS or other entities to enable the commissioner to:

(1) Collect and maintain records;

(2) Coordinate multistate licensing processes and supervision processes;

(3) Process fees; and

(4) Facilitate communication between this state and licensees or other persons subject to this chapter.

45-7-112. Nationwide multistate licensing system and registry.

(a) The commissioner is authorized to utilize NMLS for all aspects of licensing in accordance with this chapter, including, but not limited to, license applications, renewal applications, applications for acquisitions of control, notifications, surety bonds, reporting, criminal history background checks, credit checks, fee processing, and examinations. The commissioner is authorized to:

(1) Promulgate rules that are reasonably necessary for participation in, transition to, or operation of NMLS;

(2) Utilize NMLS forms, processes, and functionalities in accordance with this chapter;

(3) Require that applications, notifications, reports, and any other information required under this chapter be filed with NMLS;

(4) Require that any fees required to be paid under this chapter be paid through NMLS; and

(5) Take other actions as are reasonably necessary to give effect to this section.

(b) Applicants and licensees under this chapter shall pay all costs associated with submitting an application to NMLS, as well as all costs required by NMLS for maintaining and renewing any license issued by the commissioner on NMLS.

(c) The commissioner is authorized to use NMLS as an agent for channeling information, whether criminal or noncriminal in nature, or whether derived from or distributed to the United States department of justice, any other state or federal governmental agency, or any other source, that the commissioner is authorized to request or distribute under this chapter.

(d)(1) In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to NMLS, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to the information or material after the information or material has been disclosed to NMLS. The information or material may be shared with all state and federal regulatory officials with money transmission oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including the protection available under §§ 45-1-120 and 45-7-108.

(2) For purposes of subdivision (d)(1), the commissioner is authorized to enter into agreements or sharing agreements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or an order of the commissioner.

(3) Information or material that is subject to a privilege or is confidential under subdivision (d)(1) is not subject to:

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

(B) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by NMLS applicable to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part, in the discretion of such person.

(4) This section supersedes any inconsistent provisions of title 10, chapter 7, part 5, pertaining to the records open to public inspection.

(5) This section does not apply with respect to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to this chapter that is included in NMLS for access by the public.

(e) Notwithstanding any other provision of this section, the commissioner retains full authority and discretion to license persons under this chapter and to enforce this chapter to its fullest extent. Nothing in this section reduces or derogates that authority and discretion.

(f) For the purpose of participating in NMLS, the commissioner is authorized to waive or modify, in whole or in part, any or all of the requirements under this chapter and to establish new requirements as reasonably necessary to participate in NMLS.

45-7-113. Application for license.

(a) Applicants for a license under this chapter shall apply in a form and in a medium as prescribed by the commissioner. The application must state or contain, as applicable:

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

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

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

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

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

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

(7) A sample form of contract for authorized delegates, as applicable;

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

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

(10) Any other information the commissioner or NMLS reasonably requires with respect to the applicant.

(b) If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant shall also provide:

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

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

(3) A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;

(4) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the ten-year period next preceding the submission of the application of each key individual and person in control of the applicant;

(5) A list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the ten-year period preceding the submission of the application;

(6) A copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application or, if determined to be acceptable to the commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the commissioner;

(7) A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;

(8) If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States Securities and Exchange Commission under 15 U.S.C. § 78m;

(9) If the applicant is a wholly owned subsidiary of:

(A) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under 15 U.S.C. § 78m; or

(B) A corporation publicly traded outside the United States, a copy of similar documentation filed with the parent corporation's non-United States regulator;

(10) The name and address of the applicant's registered agent in this state; and

(11) Any other information the commissioner reasonably requires with respect to the applicant.

(c) A nonrefundable supervision fee as provided in § 45-1-118(i) must accompany an application for a license under this section.

(d) The commissioner may waive one (1) or more requirements of subsections (a) and (b), or permit an applicant to submit other information in lieu of the required information.

45-7-114. Information requirements for certain individuals.

(a) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner the following items:

(1) The individual's fingerprints for submission to the federal bureau of investigation and the commissioner for purposes of a national criminal history background check, unless the individual currently resides outside of the United States and has resided outside of the United States for the last ten (10) years;

(2) Information pertaining to the individual's personal history and experience in a form and in a medium prescribed by the commissioner; and

(3) The individual's authorization for the commissioner or NMLS, or both, to obtain:

(A) An independent credit report from a consumer reporting agency;

(B) Information related to any criminal convictions or pending charges;
and

(C) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(b) If the individual has resided outside of the United States at any time in the last ten (10) years, the individual shall also provide an investigative background report prepared by an independent search firm acceptable to the commissioner that meets the following requirements:

(1) At a minimum, the search firm shall:

(A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(B) Not be affiliated with or have an interest with the individual it is researching; and

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

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

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

(C) Employment history;

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

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

45-7-115. Issuance of license.

(a) When an application for an original license under this chapter appears to the commissioner to include all the items and address all of the matters that are required, the application is considered complete under this section.

(b) Unless the commissioner has extended the application period pursuant to subsection (c), or the commissioner has approved or denied the application within one hundred eighty (180) days after the date that the commissioner determined the application to be complete:

(1) The application is approved; and

(2) The license takes effect as of the first business day after expiration of the one hundred eighty-day period.

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

(d) A determination by the commissioner that an application is considered complete under this section means only that the application, on its face, appears to include all items, including the criminal background check response from the federal bureau of investigation, or

investigative background report, if applicable, and address all matters required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(e) When an application is filed and considered complete under this section, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this section if the commissioner finds that the following conditions have been fulfilled:

(1) The applicant has complied with §§ 45-7-113 and 45-7-114; and

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

(f) The commissioner shall notify the applicant in writing of a denial of an application under this section, stating the basis for denial. If the commissioner denies an application, the applicant may make a written request to the commissioner for a hearing on the question of whether the license should be granted. Any hearing requested under this subsection (f) must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the individual has requested the hearing in writing within thirty (30) days of the date of the commissioner's denial. At the hearing, the applicant must prove by a preponderance of the evidence that the applicant is entitled to a license.

(g) The initial license term begins on the day the application is approved. The license expires on December 31st of the year in which the license term began.

45-7-116. Renewal of license.

(a)(1) A license under this chapter must be renewed annually.

(2) A nonrefundable supervision fee, as provided in § 45-1-118(i), must be paid between November 1 and December 31 of each year.

(3) The renewal term is for a period of one (1) year and begins on January 1 of each year after the initial license term and expires on December 31 of the year the renewal term begins.

(b) A licensee shall submit a renewal report with the supervision fee, in a form and in a medium prescribed by the commissioner, between November 1 and December 31 of each year. The renewal report must state or contain a description of each material change in information submitted by the licensee in its original license application that has not been reported to the commissioner.

(c) Failure to timely pay the supervision fee or to timely submit a completed renewal report causes the license to expire at the close of business on December 31. An abatement of the supervision fee must not be made if the license is surrendered, cancelled, revoked, or suspended prior to the expiration of the period for which it was issued.

(d) Licenses issued or renewed under the former provisions of this chapter expire on December 31, 2024.

45-7-117. Maintenance of license.

(a) If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the commissioner may suspend or revoke the licensee's license in accordance with the procedures established by this chapter or other applicable state law for such suspension or revocation.

(b) An applicant for a money transmission license must demonstrate that it meets or will meet the requirements in §§ 45-7-135, 45-7-136, and 45-7-137. A money transmission licensee must at all times meet the requirements in §§ 45-7-135, 45-7-136, and 45-7-137.

45-7-118. Acquisition of control.

(a) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An

individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(b) A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee, submit an application to acquire control, in a form and in a medium prescribed by the commissioner.

(c) Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner pursuant to subsection (b) without using NMLS.

(d) The application required by subsection (b) must include information required by § 45-7-114 for any new key individuals that have not previously completed the requirements of § 45-7-114 for a licensee.

(e)(1) When an application for acquisition of control under this section appears to the commissioner to include all the items and to address all the matters that are required, the commissioner shall determine whether the application is complete under this section, and:

(A) Within sixty (60) days of concluding an application is complete, the commissioner may either approve or deny the application; or

(B) If the application is not approved or denied within sixty (60) days after the date that the commissioner determined the application to be complete:

(i) The application is approved; and

(ii) The person, or group of persons acting in concert, are not prohibited from acquiring control.

(2) The commissioner may for good cause extend the application period.

(f) A determination by the commissioner that an application is complete under this section means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and the determination is neither an assessment of the substance of the application nor of the sufficiency of the information provided.

(g) When an application is filed and considered complete under this section, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that the following conditions have been fulfilled:

(1) The requirements of subsections (b) and (d) have been met, as applicable; and

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

(h) The commissioner shall notify the licensee in writing of a denial of an application under this section, stating the basis for denial. If the commissioner denies an application, the licensee may make a written request to the commissioner for a hearing on the question of whether the application should be approved. Any hearing requested under this subsection (h) must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the licensee has requested the hearing in writing within thirty (30) days of the date of the commissioner's denial. At the hearing, the licensee must prove by a preponderance of the evidence that the applicant is entitled to a license.

(i) The requirements of subsections (a) and (b) do not apply to the following:

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

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

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

(4) A person that is exempt under § 45-7-104(6);

(5) A person that the commissioner determines is not subject to subsections (a) and (b) based on the public interest;

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

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

(j) Persons exempt under subdivisions (i)(2), (3), (4), (6), or (7) in cooperation with the licensee shall notify the commissioner within fifteen (15) days after the acquisition of control.

(k)(1) The requirements of subsections (a) and (b) do not apply to a person that has complied with and received approval to engage in money transmission under this chapter or was identified as a person in control in a prior application filed with and approved by the commissioner; provided, that:

(A) The person has not had a license revoked or suspended, or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five (5) years;

(B) If the person is a licensee, the person is well-managed and has received at least a satisfactory rating for compliance at its most recent examination by this state, if such rating was given;

(C) The licensee to be acquired is projected to meet the requirements of §§ 45-7-135, 45-7-136, and 45-7-137 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of §§ 45-7-135, 45-7-136, and 45-7-137 after the acquisition of control is completed;

(D) The licensee to be acquired will not implement any material changes to its business plan because of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan because of the acquisition of control; and

(E) The person provides notice of the acquisition in cooperation with the licensee and attests to subdivisions (k)(1)(A)-(D) in a form and in a medium prescribed by the commissioner.

(2) If the notice is not disapproved within thirty (30) days after the date on which the notice and attestation were determined by the commissioner to be complete, then the notice is deemed approved.

45-7-119. Notice and information requirements for a change of key individuals.

(a) A licensee adding or replacing any key individual shall:

(1) Provide notice in a manner prescribed by the commissioner within fifteen (15) days after the effective date of the key individual's appointment; and

(2) Provide information as required by § 45-7-114 within forty-five (45) days after the effective date.

(b) Within ninety (90) days after the date on which the commissioner determines that the notice and information provided pursuant to subsection (a) is complete, the commissioner may issue a notice of disapproval of a key individual if, based on the competence, experience, character, or integrity of the individual, it would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(c) A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. If the commissioner issues a

notice of disapproval, the licensee may make a written request to the commissioner for a hearing on the question of whether the notice should be approved. Any hearing requested under this subsection (c) must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, that the licensee has requested the hearing in writing within thirty (30) days of the date of the commissioner's disapproval. At the hearing, the licensee must prove by a preponderance of the evidence that the notice should be approved.

(d) If the notice provided pursuant to subsection (a) is not disapproved within ninety (90) days after the date on which the commissioner determined the notice and information provided pursuant to subsection (a) to be complete, the key individual is deemed approved.

45-7-120. Report of condition.

(a) Each licensee shall submit a report of condition within forty-five (45) days after the end of the calendar quarter, or within any extended time as the commissioner may prescribe.

(b) The report of condition must include:

(1) Financial information at the licensee level;

(2) Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(3) Permissible investments reports;

(4) Transaction destination country reporting for money received for transmission; and

(5) Any other information the commissioner requires with respect to the licensee. The commissioner is authorized to change or update, as necessary, the requirements of this section to carry out the purposes of this chapter and maintain consistency with NMLS reporting.

(c) The information required by subdivision (b)(4) must only be included in a report of condition submitted within forty-five (45) days after the end of the fourth calendar quarter.

45-7-121. Audited financials.

(a) Each licensee shall, within ninety (90) days after the end of each fiscal year, or within any extended time as the commissioner may prescribe, file with the commissioner:

(1) An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and

(2) Any other information as the commissioner may reasonably require.

(b) The audited financial statements must be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the commissioner.

(c) The audited financial statements must include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

45-7-122. Authorized delegate reporting.

(a) Each licensee shall submit a report of authorized delegates within forty-five (45) days after the end of the calendar quarter.

(b) The authorized delegate report must include, at a minimum, each authorized delegate's:

(1) Company legal name;

(2) Taxpayer employer identification number;

- (3) Principal provider identifier;
- (4) Physical address;
- (5) Mailing address;
- (6) Business conducted in other states;
- (7) Any fictitious or trade name;
- (8) Contact person name, phone number, and email;
- (9) Start date as licensee's authorized delegate;
- (10) End date acting as licensee's authorized delegate, if applicable; and
- (11) Any other information the commissioner reasonably requires with respect to the authorized delegate.

45-7-123. Reports of certain events.

(a) A licensee shall file a report with the commissioner, describing the event and its expected impact on the licensee's activities in the state, within three (3) days after the occurrence of any of the following events:

- (1) The filing of a petition by or against the licensee under the United States Bankruptcy Code (11 U.S.C. §§ 101-110), as amended or recodified from time to time, for bankruptcy or reorganization;
- (2) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;
- (3) The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed;
- (4) A charge or conviction of the licensee or of a key individual or person in control of the licensee for a felony;
- (5) A charge or conviction of an authorized delegate for a felony;
- (6) The occurrence of any computer security incident; or
- (7) Other events the commissioner may determine.

(b) Each authorized delegate shall report to the licensee the theft or loss of payment instruments valued at five thousand dollars (\$5,000) or more within twenty-four (24) hours from the time the authorized delegate knew or should have known of the theft or loss. Upon the receipt of the report, the licensee shall immediately provide the information to the commissioner.

(c) As used in this section, "computer security incident" means any event that results in actual harm to the confidentiality, integrity, or availability of an information system or the information that the system processes, stores, or transmits and that has disrupted or degraded, or is reasonably likely to disrupt or degrade, a licensee's:

- (1) Ability to carry out operations, activities, or processes, or to deliver products and services to a material portion of its customer base, in the ordinary course of business;
- (2) Business lines, including associated operations, services, functions, and support, that upon failure would result in a material loss of revenue, profit, or franchise value; or
- (3) Operations, including associated services, functions, and support, as applicable, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

45-7-124. Bank Secrecy Act reports.

A licensee and an authorized delegate shall file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and other federal and state laws pertaining to money laundering.

45-7-125. Records.

(a) A licensee shall maintain the following records for at least three (3) years:

- (1) A record of each outstanding money transmission obligation sold;
- (2) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
- (3) Bank statements and bank reconciliation records;
- (4) Records of outstanding money transmission obligations;
- (5) Records of each outstanding money transmission obligation paid within the three-year period;
- (6) A list of the last known names and addresses of all of the licensee's authorized delegates; and
- (7) Any other records the commissioner reasonably requires.

(b) The items specified in subsection (a) may be maintained in any form of record.

(c) Records specified in subsection (a) may be maintained outside this state if they are made accessible to the commissioner upon the commissioner's request.

(d) All records maintained by the licensee as required by subsection (a) are open to inspection by the commissioner pursuant to § 45-7-107.

45-7-126. Relationship between licensee and authorized delegate.

(a) As used in this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

- (1) Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;
- (2) Enter into a written contract that complies with subsection (d); and
- (3) Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

(c) An authorized delegate must operate in full compliance with this chapter.

(d) The written contract required by subsection (b) must be signed by the licensee and the authorized delegate and, at a minimum, must:

- (1) Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;
- (2) State the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;
- (3) Require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and rules implementing this chapter, as well as relevant provisions of the Bank Secrecy Act and the USA PATRIOT Act of 2001 (Pub. L. No. 107-56);

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

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

(6) Require the authorized delegate to prepare and maintain records as required by this chapter or rules implementing this chapter, or as reasonably requested by the commissioner;

(7) Acknowledge that the authorized delegate consents to examination or investigation by the commissioner;

(8) State that the licensee is subject to supervision and regulation by the commissioner and that, as part of that supervision and regulation, the commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(9) Acknowledge receipt of the written policies and procedures required under subdivision (b)(1).

(e) If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five (5) business days, provide documentation to the commissioner that the licensee has notified all authorized delegates of the licensee of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

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

45-7-127. Unauthorized activities.

A person shall not engage in the business of money transmission on behalf of a person not licensed under this chapter or not exempt pursuant to § 45-7-104. A person that engages in such activity provides money transmission to the same extent as if the person were a licensee, and is jointly and severally liable with the unlicensed or nonexempt person.

45-7-128. Authorized delegate conduct.

(a) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the commissioner.

(b) All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates must be performed strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the contractual time period results in liability of the authorized delegate to the licensee for three (3) times the licensee's actual damages. The commissioner is authorized to set, by rule, the maximum remittance time.

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

45-7-129. Timely transmission.

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

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

45-7-130. Refunds.

(a) This section does not apply to:

(1) Money received for transmission subject to the Remittance Transfer Rule (12 CFR Part 1005, Subpart B); or

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

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

(1) The money has been forwarded within ten (10) days of the date on which the money was received for transmission;

(2) Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten (10) days of the date on which the money was received for transmission;

(3) The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten (10) days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, then the licensee shall issue a refund in accordance with the other provisions of this section;

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

(5) The refund request does not enable the licensee to:

(A) Identify the sender's name and address or telephone number; or

(B) Identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

45-7-131. Receipts.

(a) This section does not apply to:

(1) Money received for transmission subject to the Remittance Transfer Rule (12 CFR Part 1005, Subpart B);

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

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

(4) Payroll processing services.

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

(c)(1) A licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(2) The receipt must contain the following information, as applicable:

- (A) The name of the sender;
 - (B) The name of the designated recipient;
 - (C) The date of the transaction;
 - (D) The unique transaction or identification number;
 - (E) The name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's customer service telephone number;
 - (F) The amount of the transaction in United States dollars;
 - (G) Any fee charged by the licensee to the sender for the transaction;
- and
- (H) Any taxes collected by the licensee from the sender for the transaction.

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

45-7-132. Notice.

(a) A licensee or authorized delegate shall conspicuously disclose on the licensee's website or mobile application, and conspicuously post on the premises of each physical location in this state where the licensee or authorized delegate conducts money transmission, the name and phone number of the department and a statement that the licensee's customers can contact the department with questions or complaints about the licensee's money transmission services.

(b) A licensee or authorized delegate may include on a receipt the name and phone number of the department and a statement that the licensee's customers can contact the department with complaints about the licensee's money transmission services.

45-7-133. Disclosures for payroll processing services.

(a) A licensee that provides payroll processing services shall:

- (1) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and
- (2) Make available worker paystubs or an equivalent statement to workers.

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

45-7-134. Licensee liability.

A licensee's responsibility to any person who purchases a payment instrument or money transmission transaction from a licensee or a licensee's authorized agent is limited to the face amount of the payment instrument or money transmission transaction purchased.

45-7-135. Net worth.

(a) A licensee under this chapter shall at all times maintain a tangible net worth of:

- (1) The greater of one hundred thousand dollars (\$100,000) or three percent (3%) of total assets for the first one hundred million dollars (\$100,000,000);
- (2) Two percent (2%) of additional assets for one hundred million dollars (\$100,000,000) to one billion dollars (\$1,000,000,000); and
- (3) One-half of one percent (0.5%) of additional assets for over one billion dollars (\$1,000,000,000);

(b) Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to § 45-7-113(b)(6).

45-7-136. Surety bond.

(a) An applicant for a money transmission license shall provide, and a licensee shall maintain at all times, security consisting of a surety bond in a form satisfactory to the commissioner.

(b) The amount of the required security must be the greater of fifty thousand dollars (\$50,000) or an amount equal to one hundred percent (100%) of the licensee's average daily money transmission liability in this state calculated for the most recently completed calendar quarter, up to a maximum of eight hundred thousand dollars (\$800,000).

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

(d) A licensee may exceed the maximum required bond amount pursuant to § 45-7-138(a)(5).

(e) The surety bond must run to the state of Tennessee for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. The aggregate liability of the surety bond shall not exceed the principal sum of the bond. Surety bonds must be obtained for a term of not less than one (1) year and evidence of the renewal of the surety bond must be provided to the commissioner not less than thirty (30) days before the bond expiration date. Claimants against the licensee or its authorized delegates may bring suit directly on the security device, or the commissioner may bring suit on behalf of the claimants, either in one (1) action or in successive actions. In the case of an irrevocable letter of credit, licensees shall obtain letters of credit for terms of not less than three (3) years and renew the letters of credit annually.

(f) The surety bond must remain in effect until cancellation, which may occur only after thirty (30) days' written notice to the commissioner. Cancellation does not affect any liability incurred or accrued during that period.

(g) The surety bond must remain in place for three (3) years after the licensee ceases money transmission operations in this state. The commissioner may permit a licensee to substitute a letter of credit or other form of security device acceptable to the commissioner for the security device in place at the time the licensee ceases money transmission operations in this state.

45-7-137. Maintenance of permissible investments.

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

(b) Except for permissible investments under § 45-7-138(a), the commissioner, with respect to any licensee, may limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the federal Bankruptcy Code (11 U.S.C. §§ 101-110) for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this subsection (c) are subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(d) Upon the establishment of a statutory trust in accordance with subsection (c), or when any funds are drawn on a letter of credit pursuant to § 45-7-138(a)(4), the commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter

of credit, as applicable. Notice is deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established pursuant to this chapter terminates upon extinguishment of all of the licensee's outstanding money transmission obligations.

(e) The commissioner may allow other types of investments that the commissioner determines are of sufficient liquidity and quality to be a permissible investment.

45-7-138. Types of permissible investments.

(a) The following investments are permissible under § 45-7-137:

(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents, including automated clearing house (ACH) items in transit to the licensee, ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating service;

(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined in 12 U.S.C. § 1813(c), or of an insured credit union, as defined in 12 U.S.C. § 1752(7);

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

(4)(A) The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner, that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven (7) days of presentation of the items required by subdivision (a)(4)(D);

(B) The letter of credit must:

(i) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that:

(a) Bears an eligible rating or whose parent company bears an eligible rating; and

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

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

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

(iv) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one (1) year from the present or each future expiration date, unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty (60) days prior to any expiration date, that the irrevocable letter of credit will not be extended;

(C) In the event of any notice of expiration or non-extension of a letter of credit issued under subdivision (a)(4)(B)(iv), the licensee shall demonstrate to the satisfaction of the commissioner, fifteen (15) days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with § 45-7-137(a) upon the expiration of the letter of credit. If the licensee is not able to do so, then the commissioner 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 § 45-7-137(a). Any such draw must be offset against the licensee's outstanding money transmission obligations. The commissioner or the commissioner's designated agent shall hold drawn funds in trust, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations;

(D) The letter of credit must 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:

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

(ii) 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 federal Bankruptcy Code (11 U.S.C. §§ 101-110), 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 the commissioner, or any other state government official holding a position of similar authority in another state, 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) Receipt by the beneficiary of 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 § 45-7-137(a) upon the expiration or non-extension of the letter of credit;

(E) The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this subsection are assigned to the commissioner; and

(5) One hundred percent (100%) of the surety bond provided for under § 45-7-136 that exceeds the average daily money transmission liability in this state.

(b) Unless permitted by the commissioner to exceed the limit, the following investments are permissible under § 45-7-137 to the extent specified:

(1) Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven (7) days old, up to fifty percent (50%) of the aggregate value of the licensee's total permissible investments;

(2) Of the receivables permissible under subdivision (b)(1), receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business must not exceed ten percent (10%) of the aggregate value of the licensee's total permissible investments;

(3) The following investments, up to twenty percent (20%) per category and combined up to fifty percent (50%) of the aggregate value of the licensee's total permissible investments:

- (A) A short-term investment of up to six (6) months bearing an eligible rating;
- (B) Commercial paper bearing an eligible rating;
- (C) A bill, note, bond, or debenture bearing an eligible rating;
- (D) United States tri-party repurchase agreements collateralized at one hundred percent (100%) or more with United States government or agency securities, municipal bonds, or other securities bearing an eligible rating;
- (E) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P, or the equivalent from any other eligible rating service; and
- (F) A mutual fund or other investment fund composed solely and exclusively of one (1) or more permissible investments listed in § 45-7-138(a)(1)–(3); and

(4) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions, up to ten percent (10%) of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

- (A) Has an eligible rating;
- (B) Is registered under the Foreign Account Tax Compliance Act (26 U.S.C. § 1471 et seq.);
- (C) Is not located in any country subject to sanctions from the Office of Foreign Assets Control; and
- (D) Is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

45-7-139. Suspension and revocation.

After notice and an opportunity for a hearing, the commissioner may suspend or revoke a licensee's license if the commissioner finds that:

- (1) A fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;
- (2) The licensee's net worth becomes inadequate and the licensee, after ten (10) days' written notice from the commissioner, fails to take steps the commissioner deems necessary to remedy the deficiency;
- (3) The licensee violated this chapter or any rule or order validly promulgated or issued by the commissioner under authority of this chapter;
- (4) An authorized delegate or authorized delegates of a licensee violated this chapter or any rule or order validly promulgated or issued by the commissioner under authority of this chapter, without the licensee making reasonable efforts to correct the violations known to the licensee to exist;
- (5) The licensee is conducting business in an unsafe or unsound manner;
- (6) The licensee is insolvent;
- (7) The licensee has demonstrated a pattern of failure or refusal to promptly pay obligations on payment instruments or transmissions of money or has made an assignment for the benefit of its creditors;
- (8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;
- (9) The licensee refused to permit the commissioner to make any examination authorized by this chapter;

(10) The licensee willfully failed to make any report or pay any fee required by this chapter;

(11) The licensee engaged in fraud, intentional misrepresentation, or gross negligence; or

(12) The licensee made or caused to be made in any application or report filed with the commissioner or any proceeding before the commissioner, any statement that was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in the application or report any material fact that is required to be stated in the application or report.

45-7-140. Suspension and revocation of authorized delegates.

(a) The commissioner may issue an order suspending or barring the authorized delegate from continuing to be or becoming an authorized delegate of any licensee during the period for which the order is in effect, if, after notice and an opportunity for a hearing, the commissioner finds that any authorized delegate of a licensee or any director, officer, employee, or controlling person of the authorized delegate has:

(1) Violated this chapter or any rule or order issued under this chapter;

(2) Engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission;

(3) Refused to permit the commissioner to make any examination authorized by this chapter;

(4) Engaged in fraud, intentional misrepresentation, or gross negligence;

(5) Been convicted of a violation of a state or federal anti-money laundering statute; or

(6) Made or caused to be made in any application or report filed with the commissioner or any proceeding before the commissioner, any statement that was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in the application or report any material fact that is required to be stated in the application or report.

(b) Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order.

(c) An authorized delegate to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will comply with all applicable provisions of this chapter and any rule or order issued under this title, if and when the person is permitted to resume being an authorized delegate of a licensee.

45-7-141. Consent orders – Emergency orders.

(a) The commissioner may enter consent orders at any time with a person to resolve a matter arising under this chapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the order. A consent order may provide that it does not constitute:

(1) An admission by a person that a provision of this chapter, or a rule or order promulgated or issued pursuant to this chapter, has been violated; or

(2) A finding by the commissioner that the person has violated a provision of this chapter, or a rule or order promulgated or issued pursuant to this chapter.

(b) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(c) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take an enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an

application to rescind the action taken, if the application is filed with the commissioner within twenty (20) days of the receipt of the notice of the commissioner's emergency action.

45-7-142. Criminal penalties – Reports.

(a) A person who knowingly and willfully violates this chapter or any order or rule issued pursuant to this chapter for which a penalty is not specifically provided commits a Class C misdemeanor; provided, that each day the violation occurs constitutes a separate offense.

(b) A person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this chapter with the intent to deceive the recipient of the document commits a Class E felony.

(c) A person who knowingly and willfully fails to file a document required to be filed under this chapter commits a Class E felony.

(d) A person who carries on an unauthorized money transmitter business commits a Class E felony.

(e) A person who obstructs or endeavors to obstruct a lawful examination of a licensee or agent commits a Class E felony.

(f) The commissioner shall submit to the district attorneys general for the respective counties of the state any criminal violation of this chapter known by the commissioner to have occurred in the county. The commissioner shall also report the violation to the appropriate division of the Tennessee bureau of investigation. The commissioner may provide the information to the attorney general and reporter, the appropriate federal authorities, or both, as the commissioner deems proper. Confidential information that is communicated by the commissioner pursuant to this section remains confidential in the hands of the agency to which the information is reported, and does not become a matter of public record by virtue of this communication.

45-7-143. Orders.

If, after notice and an opportunity for a hearing, the commissioner finds that a person has violated this chapter or a rule promulgated in accordance with this chapter, the commissioner may order the person to:

(1) Cease and desist violating the chapter or any rule promulgated in accordance with this chapter;

(2) Refund, disburse, or disgorge any fees collected in violation of this chapter or a rule promulgated in accordance with this chapter;

(3) Pay to the commissioner a civil penalty in an amount specified by the commissioner, not to exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues; or

(4) Pay the costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

45-7-144. Hearings – Procedures.

A hearing or other opportunity to be heard afforded pursuant to this chapter must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. This act takes effect January 1, 2024, the public welfare requiring it.

SENATE BILL NO. 268

PASSED: March 20, 2023


Randy McNally
SPEAKER OF THE SENATE


Cameron Sexton
SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of April 2023


Bill Lee
GOVERNOR