

FOR AN ACT ENTITLED, An Act to revise various money transmitter and money transmission provisions.

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

Section 1. That § 51A-17-1 be amended to read as follows:

51A-17-1. Definition of terms. Terms used in this chapter mean:

- (1) "Applicant," any person filing an application for a license under this chapter;
- (2) "Authorized delegate," any entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee;
- (3) "Control," ownership of, or the power to vote, twenty-five percent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by such person or by any spouse, parent, or child of such person;
- (4) "Controlling person," any person in control of a licensee;
- (5) "Director," the director of the Division of Banking;
- (6) "Division," the Division of Banking;
- (7) "Electronic instrument," any card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded, and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services;
- (8) "Executive officer," the licensee's president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs

similar functions;

(9) "Key shareholder," any person, or group of persons acting in concert, who is the owner of twenty-five percent or more of any voting class of an applicant's stock;

(10) "Licensee," any person licensed pursuant to this chapter;

(11) "Material litigation," any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents;

(12) "Monetary value," any medium of exchange, whether or not redeemable in money;

(13) "Money transmission," engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any means, including wire, facsimile, or electronic transfer;

(14) "Nationwide mortgage licensing system and registry," a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other regulated entities;

(15)(14) "Outstanding payment instrument," any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee;

(16)(15) "Payment instrument," any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term,

payment instrument, does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services;

~~(17)~~(16) "Remit," either the direct payment of the funds to the licensee or its representatives authorized to receive those funds, or the deposit of the funds in a bank, credit union, savings and loan association, or other similar financial institution in an account specified by the licensee;

~~(18)~~(17) "Security device," any surety bond, irrevocable letter of credit, or similar security device;

~~(19)~~(18) "Stored value," monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Section 2. That § 51A-17-20 be amended to read as follows:

~~Time for filing renewal report and paying fee. To renew a license, the licensee shall file a renewal report by June first. A licensee that has not filed a renewal report or paid its renewal fee by June first and has not been granted an extension of time to do so by the director, shall have its license suspended immediately. The licensee in such case has thirty days after its license is suspended in which to file a renewal report and pay the renewal fee, plus one hundred dollars for each business day after suspension that the director does not receive the renewal report and the renewal fee. The director, for good cause, may grant an extension of the renewal date or reduce or suspend the late filing fee. Any license not renewed prior to July first expires.~~

Any application for renewal of a license under this chapter shall be filed with the director by December 1 and shall be accompanied by a fee and report as required in § 51A-17-19.

Any licensee that files for renewal after December 1 and before January 1 of the next calendar year shall pay a late fee in addition to the renewal fee. The late fee shall equal twenty-five percent of the renewal fee. After December 31 no license may be issued unless an application is filed

pursuant to § 51A-17-12.

Any money transmission license issued pursuant to chapter 51A-17 that is set to expire on July 1, 2015, shall be extended until December 31, 2015.

Section 3. That § 51A-17-4 be amended to read as follows:

No person, except those exempt pursuant to § 51A-17-3, may engage in the business of money transmission in this state without obtaining a license as provided in this chapter and undergoing a criminal background investigation through the division. A person is engaged in providing money transmission if the person provides those services to residents of South Dakota, even if such person has no physical presence in South Dakota. Any person may be licensed and maintain a unique identifier through the nationwide mortgage licensing system and registry.

Section 4. That chapter 51A-17 be amended by adding thereto a NEW SECTION to read as follows:

The director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice for the purpose of conducting the criminal background investigations required in § 51A-17-11. The director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from other state and federal regulatory officials or agencies with money transmission industry oversight authority as deemed necessary by the director to carry out the responsibilities of this chapter.

Section 5. That chapter 51A-17 be amended by adding thereto a NEW SECTION to read as follows:

The director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and

registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

Section 6. That chapter 51A-17 be amended by adding thereto a NEW SECTION to read as follows:

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

(1) The provisions of § 51A-17-30 regarding privacy or confidentiality apply to any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. The information and material may be shared with other state and federal regulatory officials with money transmission industry oversight authority without the loss of privilege or the loss of confidentiality protections by federal law or § 51A-17-30;

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

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

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

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

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