

SENATE BILL NO. 2119

Introduced by

Industry and Business Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact chapter 13-09.1 of the North Dakota Century Code,
2 relating to money transmitters; to amend and reenact subsection 1 of section 6-01-01.1 of the
3 North Dakota Century Code, relating to money transmitters; to repeal chapter 13-09 of the
4 North Dakota Century Code, relating to money transmitters; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota Century
7 Code is amended and reenacted as follows:

- 8 1. There is created a special fund designated as the financial institutions regulatory fund.
9 The amounts received under the following chapters, and any other moneys received
10 by the department of financial institutions, must be deposited into this fund: chapters
11 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05, 13-08, ~~13-09~~13-09.1, 13-10, and 13-11.

12 **SECTION 2.** Chapter 13-09.1 of the North Dakota Century Code is created and enacted as
13 follows:

14 **13-09.1-01. Definitions.**

15 For purposes of this chapter, the following definitions shall apply:

- 16 1. "Acting in concert" means persons knowingly acting together with a common goal of
17 jointly acquiring control of a licensee whether or not pursuant to an express
18 agreement.
- 19 2. "Anti-Money Laundering Act of 2020" is the federal act which amended subchapter II
20 of chapter 53 of title 31 United States Code, the legislative framework commonly
21 referred to as the bank secrecy act or BSA. Anti-money laundering and countering the
22 financing of terrorism has the same meaning as the previously used terminology.
- 23 3. "Authorized delegate" means a person a licensee designates to engage in money
24 transmission on behalf of the licensee.

- 1 4. "Average daily money transmission liability" means the amount of the licensee's
2 outstanding money transmission obligations in North Dakota at the end of each day in
3 quarters ending March thirty-first, June thirtieth, September thirtieth, and December
4 thirty-first, added together and divided by the total number of days in each quarter.
- 5 5. "Closed loop stored value" means stored value that is redeemable by the issuer only
6 for goods or services provided by the issuer or its affiliate or franchisees of the issuer
7 or its affiliate, except to the extent required by applicable law to be redeemable in cash
8 for its cash value.
- 9 6. "Commissioner" means the commissioner of the department of financial institutions.
- 10 7. "Control" means:
- 11 a. (1) The power to vote, directly or indirectly, at least twenty-five percent of the
12 outstanding voting shares or voting interests of a licensee or person in
13 control of a licensee;
- 14 (2) The power to elect or appoint a majority of key individuals or executive
15 officers, managers, directors, trustees, or other persons exercising
16 managerial authority of a person in control of a licensee; or
- 17 (3) The power to exercise, directly or indirectly, a controlling influence over the
18 management or policies of a licensee or person in control of a licensee.
- 19 b. Rebuttable presumption of control.
- 20 (1) A person is presumed to exercise a controlling influence when the person
21 holds the power to vote, directly or indirectly, at least ten percent of the
22 outstanding voting shares or voting interests of a licensee or person in
23 control of a licensee.
- 24 (2) A person presumed to exercise a controlling influence as defined by
25 subsection 6 can rebut the presumption of control if the person is a passive
26 investor.
- 27 c. For purposes of determining the percentage of a person controlled by any other
28 person, the person's interest must be aggregated with the interest of any other
29 immediate family member, including the person's spouse, parents, children,
30 siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and
31 sisters-in-law, and any other person who shares the person's home.

- 1 8. "Eligible rating" means a credit rating of any of the three highest rating categories
2 provided by an eligible rating service, whereby each category may include rating
3 category modifiers, such as "plus" or "minus" for S&P Global, or the equivalent for any
4 other eligible rating service. Long-term credit ratings are deemed eligible if the rating is
5 equal to A- or higher by S&P Global, or the equivalent from any other eligible rating
6 service. Short-term credit ratings are deemed eligible if the rating is equal to or higher
7 than A-2 or SP-2 by S&P Global, or the equivalent from any other eligible rating
8 service. In the event that ratings differ among eligible rating services, the highest
9 rating applies when determining whether a security bears an eligible rating.
- 10 9. "Eligible rating service" means any nationally recognized statistical rating organization
11 as defined by the United States securities and exchange commission, and any other
12 organization designated by the commissioner by rule or order.
- 13 10. "Federally insured depository financial institution" means a bank, credit union, savings
14 and loan association, trust company, savings association, savings bank, industrial
15 bank, or industrial loan company organized under the laws of the United States or any
16 state of the United States, when such bank, credit union, savings and loan
17 association, trust company, savings association, savings bank, industrial bank, or
18 industrial loan company has federally insured deposits.
- 19 11. "In this state" means at a physical location within North Dakota for a transaction
20 requested in person. For a transaction requested electronically or by phone, the
21 provider of money transmission may determine if the person requesting the
22 transaction is "in this state" by relying on other information provided by the person
23 regarding the location of the individual's residential address or a business entity's
24 principal place of business or other physical address location, and any records
25 associated with the person that the provider of money transmission may have that
26 indicate the location, including an address associated with an account.
- 27 12. "Individual" means a natural person.
- 28 13. "Key individual" means any individual ultimately responsible for establishing or
29 directing policies and procedures of the licensee, such as an executive officer,
30 manager, director, or trustee.
- 31 14. "Licensee" means a person licensed under this chapter.

- 1 15. "Material litigation" means litigation, that according to United States generally
2 accepted accounting principles is significant to a person's financial health and would
3 be required to be disclosed in the person's annual audited financial statements, report
4 to shareholders, or similar records.
- 5 16. "Monetary value" means a medium of exchange, whether or not redeemable in money.
- 6 17. "Money" means a medium of exchange that is authorized or adopted by the United
7 States or a foreign government. The term includes a monetary unit of account
8 established by an intergovernmental organization or by agreement between two or
9 more governments.
- 10 18. "Money service business accredited state" means a state agency that is accredited by
11 the conference of state bank supervisors and money transmitter regulators association
12 for money transmission licensing and supervision.
- 13 19. "Money transmission" means any of the following:
14 a. Selling or issuing payment instruments to a person located in this state.
15 b. Selling or issuing stored value to a person located in this state.
16 c. Receiving money for transmission from a person located in this state.
17 The term includes payroll processing services. The term does not include the provision
18 solely of online or telecommunications services or network access.
- 19 20. "Multistate licensing process" means any agreement entered by and among state
20 regulators relating to coordinated processing of applications for money transmission
21 licenses, applications for the acquisition of control of a licensee, control
22 determinations, or notice and information requirements for a change of key individuals.
- 23 21. "Nationwide system" means the nationwide multistate licensing system and registry
24 developed by the conference of state bank supervisors and the American association
25 of residential mortgage regulators and owned and operated by the state regulatory
26 registry, LLC, or any successor or affiliated entity, for the licensing and registration of
27 persons in financial services industries.
- 28 22. "Outstanding money transmission obligations" means:
29 a. Any payment instrument or stored value issued or sold by the licensee to a
30 person located in the United States or reported as sold by an authorized delegate
31 of the licensee to a person that is located in the United States that has not yet

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

7 For purposes of this subsection, "in the United States" includes, to the extent
8 applicable, a person in any state, territory, or possession of the United States; the
9 District of Columbia; the Commonwealth of Puerto Rico; or a United States military
10 installation that is located in a foreign country.

11 23. "Passive investor" means a person that:

- 12 a. Does not have the power to elect a majority of key individuals or executive
13 officers, managers, directors, trustees, or other persons exercising managerial
14 authority of a person in control of a licensee;
15 b. Is not employed by and does not have any managerial duties of the licensee or
16 person in control of a licensee;
17 c. Does not have the power to exercise, directly or indirectly, a controlling influence
18 over the management or policies of a licensee or person in control of a licensee;
19 and
20 d. Either:
21 (1) Attests to subdivisions a, b, and c, in a form and in a medium prescribed by
22 the commissioner; or
23 (2) Commits to the passivity characteristics of subdivisions a, b, and c, in a
24 written document.

25 24. "Payment instrument" means a written or electronic check, draft, money order,
26 traveler's check, or other written or electronic instrument for the transmission or
27 payment of money or monetary value, whether or not negotiable. The term does not
28 include stored value or any instrument that:

- 29 a. Is redeemable by the issuer only for goods or services provided by the issuer or
30 its affiliate or franchisees of the issuer or its affiliate, except to the extent required
31 by applicable law to be redeemable in cash for its cash value; or

1 b. Not sold to the public but issued and distributed as part of a loyalty, rewards, or
2 promotional program.

3 25. "Payroll processing services" means receiving money for transmission pursuant to a
4 contract with a person to deliver wages or salaries, make payment of payroll taxes to
5 state and federal agencies, make payments relating to employee benefit plans, or
6 make distributions of other authorized deductions from wages or salaries. The term
7 "payroll processing services" does not include an employer performing payroll
8 processing services on its own behalf or on behalf of its affiliate, or a professional
9 employment organization subject to regulation under applicable state law.

10 26. "Person" means any individual, general partnership, limited partnership, limited liability
11 company, corporation, trust, association, joint stock corporation, or other corporate
12 entity identified by the commissioner.

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

16 28. "Stored value" means monetary value representing a claim against the issuer
17 evidenced by an electronic or digital record, which is intended and accepted for use as
18 a means of redemption for money or monetary value, or payment for goods or
19 services. The term includes "prepaid access" as defined by title 31, Code of Federal
20 Regulations, Section 1010.100. The term "stored value" does not include a payment
21 instrument or closed loop stored value, or stored value not sold to the public but
22 issued and distributed as part of a loyalty, rewards, or promotional program.

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

26 **13-09.1-02. Exemptions.**

27 This chapter does not apply to:

28 1. An operator of a payment system to the extent that it provides processing, clearing, or
29 settlement services, between or among persons exempted by this section or
30 licensees, in connection with wire transfers, credit card transactions, debit card

- 1 transactions, stored-value transactions, automated clearing house transfers, or similar
2 funds transfers.
- 3 2. A person appointed as an agent of a payee to collect and process a payment from a
4 payor to the payee for goods or services, other than money transmission itself,
5 provided to the payor by the payee, provided that:
- 6 a. There exists a written agreement between the payee and the agent directing the
7 agent to collect and process payments from payors on the payee's behalf;
- 8 b. The payee holds the agent out to the public as accepting payments for goods or
9 services on the payee's behalf; and
- 10 c. Payment for the goods and services is treated as received by the payee upon
11 receipt by the agent so that the payor's obligation is extinguished and there is no
12 risk of loss to the payor if the agent fails to remit the funds to the payee.
- 13 3. A person that acts as an intermediary by processing payments between an entity that
14 has directly incurred an outstanding money transmission obligation to a sender, and
15 the sender's designated recipient, provided that the entity:
- 16 a. Is properly licensed or exempt from licensing requirements under this chapter;
- 17 b. Provides a receipt, electronic record, or other written confirmation to the sender
18 identifying the entity as the provider of money transmission in the transaction;
19 and
- 20 c. Bears sole responsibility to satisfy the outstanding money transmission obligation
21 to the sender, including the obligation to make the sender whole in connection
22 with any failure to transmit the funds to the sender's designated recipient.
- 23 4. The United States or a department, agency, instrumentality, or its agent.
- 24 5. Money transmission by the United States postal service or by an agent of the United
25 States postal service.
- 26 6. A state, county, city, or any other governmental agency or governmental subdivision,
27 or instrumentality of a state, or its agent.
- 28 7. A federally insured depository financial institution, bank holding company, office of an
29 international banking corporation, foreign bank that establishes a federal branch
30 pursuant to the International Bank Act of 1978 [12 U.S.C. Section 3102], corporation

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

1 **13-09.1-03. Authority to require demonstration of exemption.**

2 The commissioner may require any person claiming to be exempt from licensing pursuant
3 to section 13-09.1-02 to provide information and documentation to the commissioner
4 demonstrating the person qualifies for any claimed exemption.

5 **13-09.1-04. Implementation.**

6 1. In order to carry out the purposes of this chapter, the commissioner may, subject to the
7 provisions of subsections 1 and 2 of section 13-09.1-05:

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

13 b. Use, hire, contract, or employ analytical systems, methods, or software to
14 examine or investigate any person subject to this chapter;

15 c. Accept, from other state or federal government agencies or officials, licensing,
16 examination, or investigation reports made by other state or federal government
17 agencies or officials; and

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

21 2. The commissioner has the broad administrative authority to administer, interpret, and
22 enforce this chapter; promulgate rules or regulations implementing this chapter; and to
23 recover the cost of administering and enforcing this chapter by imposing and collecting
24 proportionate and equitable fees and costs associated with applications, examinations,
25 investigations, and other actions required to achieve the purpose of this chapter.

26 **13-09.1-05. Confidentiality.**

27 1. Except as otherwise provided in subsection 2, all information or reports obtained by
28 the commissioner from an applicant, licensee, or authorized delegate, and all
29 information contained in or related to an examination, investigation, operating report,
30 or condition report prepared by, on behalf of, or for the use of the commissioner, or

- 1 financial statements, balance sheets, or authorized delegate information, are
2 confidential and are not subject to disclosure under section 6-01-07.1.
- 3 2. The commissioner may disclose information not otherwise subject to disclosure under
4 subsection 1 to representatives of state or federal agencies who promise in a record
5 that they will maintain the confidentiality of the information or where the commissioner
6 finds that the release is reasonably necessary for the protection and interest of the
7 public in accordance with section 6-01-07.1.
- 8 3. This section does not prohibit the commissioner from disclosing to the public a list of
9 all licensees or the aggregated financial or transactional data concerning those
10 licensees.
- 11 4. Information contained in the records of the department of financial institutions that is
12 not confidential and may be made available to the public either on the department of
13 financial institutions' website, upon receipt by the department of financial institutions of
14 a written request, or in the nationwide system must include:
- 15 a. The name, business address, telephone number, and unique identifier of a
16 licensee;
- 17 b. The business address of a licensee's registered agent for service;
- 18 c. The name, business address, and telephone number of all authorized delegates;
- 19 d. The terms of or a copy of any bond filed by a licensee, provided that confidential
20 information, including prices and fees for bond is redacted;
- 21 e. Copies of any nonconfidential final orders of the department of financial
22 institutions relating to any violation of this chapter or regulations implementing
23 this chapter; and
- 24 5. Imposition of an administrative fine or penalty under this chapter.

25 **13-09.1-06. Supervision.**

- 26 1. The commissioner may conduct an examination or investigation of a licensee or
27 authorized delegate or otherwise take independent action authorized by this chapter or
28 by a rule adopted or order issued under this chapter as reasonably necessary or
29 appropriate to administer and enforce this chapter, regulations implementing this
30 chapter, and other applicable law, including the federal Anti-Money Laundering Act of
31 2020. The commissioner may:

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

23 **13-09.1-07. Networked supervision.**

- 24 1. To efficiently and effectively administer and enforce this chapter and to minimize
25 regulatory burden, the commissioner may participate in multistate supervisory
26 processes established between states and coordinated through the conference of
27 state bank supervisors, money transmitter regulators association, and affiliates and
28 successors for all licensees that hold licenses in this state and other states. As a
29 participant in multistate supervision, the commissioner will:
- 30 a. Cooperate, coordinate, and share information with other state and federal
31 regulators in accordance with section 13-09.1-05;

- 1 b. Enter into written cooperation, coordination, or information-sharing contracts or
2 agreements with organizations the membership of which is made up of state or
3 federal governmental agencies; and
- 4 c. Cooperate, coordinate, and share information with organizations the membership
5 of which is made up of state or federal governmental agencies, provided that the
6 organizations agree in writing to maintain the confidentiality and security of the
7 shared information in accordance with section 13-09.1-05.
- 8 2. The commissioner may not waive, and nothing in this section constitutes a waiver of,
9 the commissioner's authority to conduct an examination or investigation or otherwise
10 take independent action authorized by this chapter or a rule adopted or order issued
11 under this chapter to enforce compliance with applicable state or federal law.
- 12 3. A joint examination or investigation, or acceptance of an examination or investigation
13 report, does not waive an examination assessment provided for in this chapter.

14 **13-09.1-08. Relationship to federal law.**

- 15 1. In the event state money transmission jurisdiction is conditioned on a federal law, any
16 inconsistencies between a provision of this chapter and the federal law governing
17 money transmission must be governed by the applicable federal law to the extent of
18 the inconsistency.
- 19 2. In the event of any inconsistencies between this chapter and a federal law that
20 governs pursuant to subsection 1, the commissioner may provide interpretive
21 guidance that identifies:
- 22 a. The inconsistency; and
- 23 b. The appropriate means of compliance with federal law.

24 **13-09.1-09. License required.**

- 25 1. A person may not engage in the business of money transmission or advertise, solicit,
26 or hold itself out as providing money transmission unless the person is licensed under
27 this chapter;
- 28 2. Subsection 1 does not apply to:
- 29 a. A person that is an authorized delegate of a person licensed under this chapter
30 acting within the scope of authority conferred by a written contract with the
31 licensee; or

1 b. A person that is exempt pursuant to section 13-09.1-02 and does not engage in
2 money transmission outside the scope of the exemption.

3 3. A license issued under section 13-09.1-13 is not transferable or assignable.

4 **13-09.1-10. Consistent state licensing.**

5 1. To establish consistent licensing between North Dakota and other states, the
6 commissioner may:

7 a. Implement all licensing provisions of this chapter in a manner that is consistent
8 with other states that have adopted this chapter or multistate licensing processes;
9 and

10 b. Participate in nationwide protocols for licensing cooperation and coordination
11 among state regulators provided that the protocols are consistent with this
12 chapter.

13 2. In order to fulfill the purposes of this chapter, the commissioner may establish
14 relationships or contracts with the nationwide system or other entities designated by
15 the nationwide system to enable the commissioner to:

16 a. Collect and maintain records;

17 b. Coordinate multistate licensing processes and supervision processes;

18 c. Process fees; and

19 d. Facilitate communication between North Dakota and licensees or other persons
20 subject to this chapter.

21 3. The commissioner may utilize the nationwide system for all aspects of licensing in
22 accordance with this chapter, including license applications, applications for
23 acquisitions of control, surety bonds, reporting, criminal history background checks,
24 credit checks, fee processing, and examinations. The commissioner may utilize the
25 nationwide system forms, processes, and functionalities in accordance with this
26 chapter. In the event the nationwide system does not provide functionality, forms, or
27 processes for a provision of this chapter, the commissioner may strive to implement
28 the requirements in a manner that facilitates uniformity with respect to licensing,
29 supervision, reporting, and regulation of licensees which are licensed in multiple
30 jurisdictions.

1 4. For the purpose of participating in the nationwide system, the commissioner may
2 waive or modify, in whole or in part, by rule, regulation, or order, any or all of the
3 requirements and to establish new requirements as reasonably necessary to
4 participate in the nationwide system.

5 **13-09.1-11. Application for license.**

- 6 1. Applicants for a license shall apply in a form and in a medium as prescribed by the
7 commissioner. Each form must contain content as set forth by rule, regulation,
8 instruction, or procedure of the commissioner and may be changed or updated by the
9 commissioner in accordance with applicable law in order to carry out the purposes of
10 this chapter and maintain consistency with the nationwide system licensing standards
11 and practices. The application must state or contain, as applicable:
- 12 a. The legal name and residential and business addresses of the applicant and any
13 fictitious or trade name used by the applicant in conducting its business;
 - 14 b. A list of any criminal convictions of the applicant and any material litigation in
15 which the applicant has been involved in the ten-year period next preceding the
16 submission of the application;
 - 17 c. A description of any money transmission previously provided by the applicant and
18 the money transmission that the applicant seeks to provide in this state;
 - 19 d. A list of the applicant's proposed authorized delegates and the locations in this
20 state where the applicant and its authorized delegates propose to engage in
21 money transmission;
 - 22 e. A list of other states in which the applicant is licensed to engage in money
23 transmission and any license revocations, suspensions, or other disciplinary
24 action taken against the applicant in another state;
 - 25 f. Information concerning any bankruptcy or receivership proceedings affecting the
26 licensee or a person in control of a licensee;
 - 27 g. A sample form of contract for authorized delegates, if applicable;
 - 28 h. A sample form of payment instrument or stored value, as applicable;
 - 29 i. The name and address of any federally insured depository financial institution
30 through which the applicant plans to conduct money transmission; and

- 1 j. Any other information the commissioner or the nationwide system reasonably
2 requires with respect to the applicant.
- 3 2. If an applicant is a corporation, limited liability company, partnership, or other legal
4 entity, the applicant shall also provide:
- 5 a. The date of the applicant's incorporation or formation and state or country of
6 incorporation or formation;
- 7 b. If applicable, a certificate of good standing from the state or country in which the
8 applicant is incorporated or formed;
- 9 c. A brief description of the structure or organization of the applicant, including any
10 parents or subsidiaries of the applicant, and whether any parents or subsidiaries
11 are publicly traded;
- 12 d. The legal name, any fictitious or trade name, all business and residential
13 addresses, and the employment, as applicable, in the ten-year period next
14 preceding the submission of the application of each key individual and person in
15 control of the applicant;
- 16 e. A list of any criminal convictions and material litigation in which a person in
17 control of the applicant that is not an individual has been involved in the ten-year
18 period preceding the submission of the application;
- 19 f. A copy of audited financial statements of the applicant for the most recent fiscal
20 year and for the two-year period next preceding the submission of the application
21 or, if determined to be acceptable to the commissioner, certified unaudited
22 financial statements for the most recent fiscal year or other period acceptable to
23 the commissioner;
- 24 g. A certified copy of unaudited financial statements of the applicant for the most
25 recent fiscal quarter;
- 26 h. If the applicant is a publicly traded corporation, a copy of the most recent report
27 filed with the United States securities and exchange commission under
28 section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C.
29 Section 78m];
- 30 i. If the applicant is a wholly owned subsidiary of:

- 1 (1) A corporation publicly traded in the United States, a copy of audited financial
2 statements for the parent corporation for the most recent fiscal year or a
3 copy of the parent corporation's most recent report filed under section 13 of
4 the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m]; or
5 (2) A corporation publicly traded outside the United States, a copy of similar
6 documentation filed with the regulator of the parent corporation's domicile
7 outside the United States;
8 j. The name and address of the applicant's registered agent in this state; and
9 k. Any other information the commissioner reasonably requires with respect to the
10 applicant.
11 3. A nonrefundable application fee of four hundred fifty dollars and a license fee of four
12 hundred dollars must accompany an application for a license under this section. The
13 license fee must be refunded if the application is denied.
14 4. The commissioner may waive one or more requirements of subsections 1 and 2 or
15 permit an applicant to submit other information in lieu of the required information.
16 **13-09.1-12. Information requirements for certain individuals.**
17 1. Any individual in control of a licensee or applicant, any individual that seeks to acquire
18 control of a licensee, and each key individual shall furnish to the commissioner
19 through the nationwide system the following items:
20 a. The individual's fingerprints for submission to the federal bureau of investigation
21 and the commissioner for purposes of a national criminal history background
22 check unless the person currently resides outside of the United States and has
23 resided outside of the United States for the last ten years.
24 b. Personal history and experience in a form and in a medium prescribed by the
25 commissioner, to obtain the following:
26 (1) An independent credit report from a consumer reporting agency unless the
27 individual does not have a social security number, in which case, this
28 requirement shall be waived;
29 (2) Information related to any criminal convictions or pending charges; and

- 1 (3) Information related to any regulatory or administrative action and any civil
2 litigation involving claims of fraud, misrepresentation, conversion,
3 mismanagement of funds, breach of fiduciary duty, or breach of contract.
- 4 2. If the individual has resided outside of the United States at any time in the last ten
5 years, the individual also shall provide an investigative background report prepared by
6 an independent search firm that meets the following requirements:
- 7 a. At a minimum, the search firm shall:
- 8 (1) Demonstrate that it has sufficient knowledge, resources, and employs
9 accepted and reasonable methodologies to conduct the research of the
10 background report; and
- 11 (2) Not be affiliated with or have an interest with the individual it is researching.
- 12 b. At a minimum, the investigative background report must be written in the English
13 language and must contain the following:
- 14 (1) If available in the individual's current jurisdiction of residency, a
15 comprehensive credit report, or any equivalent information obtained or
16 generated by the independent search firm to accomplish the report,
17 including a search of the court data in the countries, provinces, states,
18 cities, towns, and contiguous areas where the individual resided and
19 worked;
- 20 (2) Criminal records information for the past ten years, including felonies,
21 misdemeanors, or similar convictions for violations of law in the countries,
22 provinces, states, cities, towns, and contiguous areas where the individual
23 resided and worked;
- 24 (3) Employment history;
- 25 (4) Media history, including an electronic search of national and local
26 publications, wire services, and business applications; and
- 27 (5) Financial services-related regulatory history, including money transmission,
28 securities, banking, insurance, and mortgage-related industries.

29 **13-09.1-13. Issuance of license.**

- 30 1. When an application for an original license under this chapter appears to include all
31 the items, addresses, all of the matters that are required, the application is complete

1 and the commissioner shall promptly notify the applicant in a record of the date on
2 which the application is determined to be complete. The commissioner shall approve
3 or deny the application within one hundred twenty days after the completion date. The
4 commissioner may for good cause extend the application period.

5 2. A determination by the commissioner that an application is complete and is accepted
6 for processing means only that the application, on its face, appears to include all of the
7 items, including the criminal background check response from the federal bureau of
8 investigation, and address all of the matters that are required, and is not an
9 assessment of the substance of the application or of the sufficiency of the information
10 provided.

11 3. When an application is filed and considered complete under this section, the
12 commissioner shall investigate the applicant's financial condition and responsibility,
13 financial and business experience, character, and general fitness. The commissioner
14 may conduct an onsite investigation of the applicant, the reasonable cost of which the
15 applicant must pay. The commissioner shall issue a license to an applicant under this
16 section if the commissioner finds that all of the following conditions have been fulfilled:

17 a. The applicant has complied with sections 13-09.1-11 and 13-09.1-12; and

18 b. The financial condition and responsibility, financial and business experience,
19 competence, character, and general fitness of the applicant; and the
20 competence, experience, character, and general fitness of the key individuals
21 and persons in control of the applicant indicate that it is in the interest of the
22 public to permit the applicant to engage in money transmission.

23 4. If an applicant avails itself or is otherwise subject to a multistate licensing process:

24 a. The commissioner may accept the investigation results of a lead investigative
25 state for the purpose of subsection 3 if the lead investigative state has sufficient
26 staffing, expertise, and minimum standards; or

27 b. If North Dakota is a lead investigative state, the commissioner may investigate
28 the applicant pursuant to subsection 3 and the time frames established by
29 agreement through the multistate licensing process, provided, however, that in no
30 case shall the time frame be noncompliant with the application period in
31 subdivision a of subsection 1.

- 1 5. The commissioner shall issue a formal written notice of the denial of a license
2 application within thirty days of the decision to deny the application. The commissioner
3 shall set forth in the notice of denial the specific reasons for the denial of the
4 application. An applicant whose application is denied by the commissioner under this
5 subsection may appeal within thirty days after receipt of the written notice of the denial
6 by requesting a hearing before the commissioner in accordance with chapter 28-32.
- 7 6. The initial license term shall begin on the day the application is approved. The license
8 shall expire on December thirty-first of the year in which the license term began,
9 unless the initial license date is between November first and December thirty-first, in
10 which instance the initial license term runs through December thirty-first of the
11 following year.

12 **13-09.1-14. Renewal of license.**

- 13 1. A license under this chapter must be renewed annually.
- 14 a. An annual nonrefundable renewal fee must be paid by December thirty-first. The
15 fee must equal five hundred dollars or one-fourth of one percent of the money
16 transmission dollar volume in North Dakota for the twelve months ending June
17 thirtieth, whichever is greater. For the transmission of virtual currency as defined
18 in section 13-09.1-44, the fee must equal five hundred dollars or one-fourth of
19 one percent of the average United States dollar equivalent market value of the
20 virtual currency transmitted in North Dakota for the twelve months ending June
21 thirtieth, whichever is greater. The fee may not exceed two thousand five hundred
22 dollars.
- 23 b. The renewal term must be for a period of one year and begins on January first of
24 each year after the initial license term and expires on December thirty-first of the
25 year the renewal term begins.
- 26 2. A licensee shall submit a renewal report with the renewal fee, in a form and in a
27 medium prescribed by the commissioner. The renewal report must state or contain a
28 description of each material change in information submitted by the licensee in its
29 original license application which has not been reported to the commissioner.
- 30 3. The commissioner for good cause may grant an extension of the renewal date.

1 4. The commissioner may utilize the nationwide system to process license renewals
2 provided that such functionality is consistent with this section.

3 5. A licensee may renew an expired license no later than January thirty-first subject to a
4 late fee of fifty dollars.

5 **13-09.1-15. Maintenance of license.**

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

11 2. An applicant for a money transmission license and a money transmission licensee
12 must at all times meet the requirements in sections 13-09.1-32, 13-09.1-33, and
13 13-09.1-34.

14 **13-09.1-16. Acquisition of control.**

15 1. Any person, or group of persons acting in concert, seeking to acquire control of a
16 licensee shall obtain the written approval of the commissioner prior to acquiring
17 control. An individual is not deemed to acquire control of a licensee and is not subject
18 to the acquisition of control provisions when that individual becomes a key individual in
19 the ordinary course of business.

20 2. A person, or group of persons acting in concert, seeking to acquire control of a
21 licensee shall, in cooperation with the licensee:

22 a. Submit an application in a form and in a medium prescribed by the
23 commissioner; and

24 b. Submit a nonrefundable fee of four hundred fifty dollars with the request for
25 approval.

26 3. Upon request, the commissioner may permit a licensee or the person, or group of
27 persons acting in concert, to submit some or all information required by the
28 commissioner pursuant to subdivision a of subsection 2 without using the nationwide
29 system.

- 1 4. The application required by subdivision a of subsection 2 must include information
2 required by section 13-09.1-12 for any new key individuals that have not previously
3 completed the requirements of section 13-09.1-12 for a licensee.
- 4 5. When an application for acquisition of control under this section appears to include all
5 the items and address all of the matters that are required, the application must be
6 considered complete and the commissioner shall promptly notify the applicant in a
7 record of the date on which the application was determined to be complete. The
8 commissioner shall approve or deny the application within sixty days after the
9 completion date; or the commissioner may for good cause extend the application
10 period.
- 11 6. A determination by the commissioner that an application is complete and is accepted
12 for processing means only that the application, on its face, appears to include all of the
13 items and address all of the matters that are required, and is not an assessment of the
14 substance of the application or of the sufficiency of the information provided.
- 15 7. When an application is filed and considered complete under subsection 5, the
16 commissioner shall investigate the financial condition and responsibility, financial and
17 business experience, character, and general fitness of the person, or group of persons
18 acting in concert, seeking to acquire control. The commissioner shall approve an
19 acquisition of control pursuant to this section if the commissioner finds that all of the
20 following conditions have been fulfilled:
- 21 a. The requirements of subsections 2 and 4 have been met, as applicable; and
22 b. The financial condition and responsibility, financial and business experience,
23 competence, character, and general fitness of the person, or group of persons
24 acting in concert, seeking to acquire control; and the competence, experience,
25 character, and general fitness of the key individuals and persons that would be in
26 control of the licensee after the acquisition of control indicate that it is in the
27 interest of the public to permit the person, or group of persons acting in concert,
28 to control the licensee.
- 29 8. If an applicant avails itself or is otherwise subject to a multistate licensing process:

- 1 a. The commissioner may accept the investigation results of a lead investigative
2 state for the purpose of subsection 7 if the lead investigative state has sufficient
3 staffing, expertise, and minimum standards; or
- 4 b. If North Dakota is a lead investigative state, the commissioner may investigate
5 the applicant pursuant to subsection 7 and the time frames established by
6 agreement through the multistate licensing process.
- 7 9. The commissioner shall issue a formal written notice of the denial of an application to
8 acquire control within thirty days of the decision to deny the application. The
9 commissioner shall set forth in the notice of denial the specific reasons for the denial
10 of the application. An applicant whose application is denied by the commissioner
11 under this subsection may appeal within thirty days after receipt of the written notice of
12 the denial by requesting a hearing before the commissioner in accordance with
13 chapter 28-32.
- 14 10. The requirements of subsections 1 and 2 do not apply to any of the following:
- 15 a. A person that acts as a proxy for the sole purpose of voting at a designated
16 meeting of the shareholders or holders of voting shares or voting interests of a
17 licensee or a person in control of a licensee;
- 18 b. A person that acquires control of a licensee by devise or descent;
- 19 c. A person that acquires control of a licensee as a personal representative,
20 custodian, guardian, conservator, or trustee, or as an officer appointed by a court
21 of competent jurisdiction or by operation of law;
- 22 d. A person that is exempt under subsection 7 of section 13-09.1-02;
- 23 e. A person that the commissioner determines is not subject to subsection 1 based
24 on the public interest;
- 25 f. A public offering of securities of a licensee or a person in control of a licensee; or
- 26 g. An internal reorganization of a person in control of the licensee where the
27 ultimate person in control of the licensee remains the same.
- 28 11. Persons in subdivisions b, c, d, f, and g of subsection 10 in cooperation with the
29 licensee shall notify the commissioner within fifteen days after the acquisition of
30 control.

- 1 12. The requirements of subsections 1 and 2 do not apply to a person that has complied
2 with and received approval to engage in money transmission under this chapter or
3 was identified as a person in control in a prior application filed with and approved by
4 the commissioner or by a money service business accredited state pursuant to a
5 multistate licensing process, provided that:
- 6 a. The person has not had a license revoked or suspended or controlled a licensee
7 that has had a license revoked or suspended while the person was in control of
8 the licensee in the previous five years;
- 9 b. If the person is a licensee, the person is well managed and has received at least
10 a satisfactory rating for compliance at its most recent examination by a money
11 service business accredited state if such rating was given;
- 12 c. The licensee to be acquired is projected to meet the requirements of sections
13 13-09.1-32, 13-09.1-33, and 13-09.1-34 after the acquisition of control is
14 completed, and if the person acquiring control is a licensee, that licensee is also
15 projected to meet the requirements of sections 13-09.1-32, 13-09.1-33, and
16 13-09.1-34 after the acquisition of control is completed;
- 17 d. The licensee to be acquired will not implement any material changes to its
18 business plan as a result of the acquisition of control, and if the person acquiring
19 control is a licensee, that licensee also will not implement any material changes
20 to its business plan as a result of the acquisition of control; and
- 21 e. The person provides notice of the acquisition in cooperation with the licensee and
22 attests to subdivisions a through d in a form and in a medium prescribed by the
23 commissioner.
- 24 If the notice is not disapproved within thirty days after the date on which the notice was
25 determined to be complete, the notice is deemed approved.
- 26 13. Before filing an application for approval to acquire control of a licensee a person may
27 request in writing a determination from the commissioner as to whether the person
28 would be considered a person in control of a licensee upon consummation of a
29 proposed transaction. If the commissioner determines that the person would not be a
30 person in control of a licensee, the proposed person and transaction is not subject to
31 the requirements of subsections 1 and 2.

- 1 14. If a multistate licensing process includes a determination pursuant to subsection 13
2 and an applicant avails itself or is otherwise subject to the multistate licensing process:
3 a. The commissioner may accept the control determination of a lead investigative
4 state with sufficient staffing, expertise, and minimum standards for the purpose of
5 subsection 13; or
6 b. If North Dakota is a lead investigative state, the commissioner may investigate
7 the applicant pursuant to subsection 13 and the time frames established by
8 agreement through the multistate licensing process.

9 **13-09.1-17. Notice and information requirements for a change of key individuals.**

- 10 1. A licensee adding or replacing any key individual shall:
11 a. Provide notice in a manner prescribed by the commissioner within fifteen days
12 after the effective date of the key individual's appointment; and
13 b. Provide information as required by section 13-09.1-12 within forty-five days of the
14 effective date.
15 2. Within ninety days of the date on which the notice provided pursuant to subsection 1
16 was determined to be complete, the commissioner may issue a notice of disapproval
17 of a key individual if the competence, experience, character, or integrity of the
18 individual would not be in the best interests of the public or the customers of the
19 licensee to permit the individual to be a key individual of the licensee.
20 3. A notice of disapproval must contain a statement of the basis for disapproval and must
21 be sent to the licensee and the disapproved individual. A licensee may appeal a notice
22 of disapproval by requesting a hearing before the commissioner within thirty days after
23 receipt of notice of disapproval in accordance with chapter 28-32.
24 4. If the notice provided pursuant to subsection 1 is not disapproved within ninety days
25 after the date on which the notice was determined to be complete, the key individual is
26 deemed approved.
27 5. If a multistate licensing process includes a key individual notice review and
28 disapproval process pursuant to this section and the licensee avails itself or is
29 otherwise subject to the multistate licensing process:

- 1 a. The commissioner may accept the determination of another state if the
2 investigating state has sufficient staffing, expertise, and minimum standards for
3 the purpose of this section; or
4 b. If North Dakota is a lead investigative state, the commissioner may investigate
5 the applicant pursuant to subsection 2 and the time frames established by
6 agreement through the multistate licensing process.

7 **13-09.1-18. Report of condition.**

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

26 **13-09.1-19. Audited financials.**

- 27 1. Each licensee shall, within ninety days after the end of each fiscal year, or within any
28 extended time as the commissioner may prescribe, file with the commissioner:
29 a. An audited financial statement of the licensee for the fiscal year prepared in
30 accordance with United States generally accepted accounting principles; and
31 b. Any other information as the commissioner may reasonably require.

- 1 2. The audited financial statements must be prepared by an independent certified public
2 accountant or independent public accountant who is satisfactory to the commissioner.
3 3. The audited financial statements must include or be accompanied by a certificate of
4 opinion of the independent certified public accountant or independent public
5 accountant that is satisfactory in form and content to the commissioner. If the
6 certificate or opinion is qualified, the commissioner may order the licensee to take any
7 action as the commissioner may find necessary to enable the independent or certified
8 public accountant or independent public accountant to remove the qualification.

9 **13-09.1-20. Authorized delegate reporting.**

- 10 1. Each licensee shall submit a report of authorized delegates within forty-five days of the
11 end of the calendar quarter. The commissioner may utilize the nationwide system for
12 the submission of the report required by this subsection provided that such
13 functionality is consistent with the requirements of this section.
14 2. The authorized delegate report must include, at a minimum, each authorized
15 delegate's:
16 a. Company legal name;
17 b. Taxpayer employer identification number;
18 c. Principal provider identifier;
19 d. Physical address;
20 e. Mailing address;
21 f. Any business conducted in other states;
22 g. Any fictitious or trade name;
23 h. Contact person name, phone number, and electronic mail;
24 i. Start date as licensee's authorized delegate;
25 j. End date acting as licensee's authorized delegate, if applicable;
26 k. Court orders pursuant to section 13-09.1-26; and
27 l. Any other information the commissioner reasonably requires with respect to the
28 authorized delegate.

29 **13-09.1-21. Reports of certain events.**

- 30 1. A licensee shall file a report with the commissioner within one business day after the
31 licensee has reason to know of the occurrence of any of the following events:

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

14 **13-09.1-22. Anti-money laundering - Countering the financing of terrorism reports.**

15 A licensee and an authorized delegate shall file all reports required by federal currency
16 reporting, recordkeeping, and suspicious activity reporting requirements as set forth in the
17 federal Anti-Money Laundering Act of 2020 and other federal and state laws pertaining to
18 money laundering. The timely filing of a complete and accurate report required under this
19 section with the appropriate federal agency is deemed compliant with the requirements of this
20 section.

21 **13-09.1-23. Records.**

- 22 1. A licensee shall maintain the following records, for determining its compliance with this
23 chapter for at least six years:
- 24 a. A record of each outstanding money transmission obligation sold;
- 25 b. A general ledger posted at least monthly containing all asset, liability, capital,
26 income, and expense accounts;
- 27 c. Bank statements and bank reconciliation records;
- 28 d. Records of outstanding money transmission obligations;
- 29 e. Records of each outstanding money transmission obligation paid within the
30 six-year period;

- 1 f. A list of the last-known names and addresses of all of the licensee's authorized
- 2 delegates; and
- 3 g. Any other records the commissioner reasonably requires by rule.
- 4 2. The items specified in subsection 1 may be maintained in any form of record.
- 5 3. Records specified in subsection 1 may be maintained outside this state if they are
- 6 made accessible to the commissioner on seven business days' notice that is sent in a
- 7 record.
- 8 4. All records maintained by the licensee as required in subsections 1 through 3 are open
- 9 to inspection by the commissioner pursuant to subsection 1 of section 13-09.1-06.

10 **13-09.1-24. Relationship between licensee and authorized delegate.**

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

- 1 including this chapter and regulations implementing this chapter, and relevant
2 provisions of the federal Anti-Money Laundering Act of 2020;
- 3 d. Require the authorized delegate to remit and handle money and monetary value
4 in accordance with the terms of the contract between the licensee and the
5 authorized delegate;
- 6 e. Impose a trust on money and monetary value net of fees received for money
7 transmission for the benefit of the licensee;
- 8 f. Require the authorized delegate to prepare and maintain records as required by
9 this chapter or regulations implementing this chapter, or as reasonably requested
10 by the commissioner;
- 11 g. Acknowledge that the authorized delegate consents to examination or
12 investigation by the commissioner;
- 13 h. State the licensee is subject to regulation by the commissioner and that, as part
14 of that regulation, the commissioner may suspend or revoke an authorized
15 delegate designation or require the licensee to terminate an authorized delegate
16 designation; and
- 17 i. Acknowledge receipt of the written policies and procedures required under
18 subdivision a of subsection 2.
- 19 5. If the licensee's license is suspended, revoked, surrendered, or expired, the licensee
20 must, within five business days, provide documentation to the commissioner that the
21 licensee has notified all applicable authorized delegates of the licensee whose names
22 are in a record filed with the commissioner of the suspension, revocation, surrender, or
23 expiration of a license. Upon suspension, revocation, surrender, or expiration of a
24 license, applicable authorized delegates shall immediately cease to provide money
25 transmission as an authorized delegate of the licensee.
- 26 6. An authorized delegate of a licensee holds in trust for the benefit of the licensee all
27 money net of fees received from money transmission. If any authorized delegate
28 commingles any funds received from money transmission with any other funds or
29 property owned or controlled by the authorized delegate, all commingled funds and
30 other property must be considered held in trust in favor of the licensee in an amount
31 equal to the amount of money net of fees received from money transmission.

1 7. An authorized delegate may not use a subdelegate to conduct money transmission on
2 behalf of a licensee.

3 **13-09.1-25. Unauthorized activities.**

4 A person shall not engage in the business of money transmission on behalf of a person not
5 licensed under this chapter or not exempt pursuant to section 13-09.1-02. A person that
6 engages in such activity provides money transmission to the same extent as if the person were
7 a licensee, and must be jointly and severally liable with the unlicensed or nonexempt person.

8 **13-09.1-26. Prohibited authorized new delegates - Penalty.**

- 9 1. The district court of Burleigh County, in an action brought by a licensee, has
10 jurisdiction to grant appropriate equitable or legal relief, including without limitation
11 prohibiting the authorized delegate from directly or indirectly acting as an authorized
12 delegate for any licensee in this state and the payment of restitution, damages, or
13 other monetary relief, if the district court of Burleigh County finds that an authorized
14 delegate failed to remit money in accordance with the written contract required by
15 subsection 2 of section 13-09.1-24 or as otherwise directed by the licensee or required
16 by law.
- 17 2. If the district court of Burleigh County issues an order prohibiting a person from acting
18 as an authorized delegate for any licensee pursuant to subsection 1 of section
19 13-09.1-24, the licensee that brought the action shall report the order to the
20 commissioner within thirty days and shall report the order through the nationwide
21 system within ninety days.
- 22 3. An authorized delegate who holds money in trust for the benefit of a licensee and
23 knowingly fails to remit such money is guilty of a class C felony.

24 **13-09.1-27. Timely transmission.**

- 25 1. Every licensee shall forward all money received for transmission in accordance with
26 the terms of the agreement between the licensee and the sender unless the licensee
27 has a reasonable belief or a reasonable basis to believe that the sender may be a
28 victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is
29 occurring, or may occur.
- 30 2. If a licensee fails to forward money received for transmission in accordance with this
31 section, the licensee must respond to inquiries by the sender with the reason for the

1 failure unless providing a response would violate a state or federal law, rule, or
2 regulation.

3 **13-09.1-28. Refunds.**

4 1. This section does not apply to:

5 a. Money received for transmission subject to the federal remittance rule [title 12,
6 Code of Federal Regulation, part 1005, subpart B]; or

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

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

13 a. The money has been forwarded within ten days of the date on which the money
14 was received for transmission;

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

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

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

27 e. The refund request does not enable the licensee to:

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

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

1 **13-09.1-29. Receipts.**

2 1. This section does not apply to:

3 a. Money received for transmission subject to the federal remittance rule [title 12,
4 Code of Federal Regulations, part 1005, subpart B];

5 b. Money received for transmission that is not primarily for personal, family, or
6 household purposes;

7 c. Money received for transmission pursuant to a written agreement between the
8 licensee and payee to process payments for goods or services provided by the
9 payee; or

10 d. Payroll processing services.

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

16 3. Every licensee or its authorized delegate shall provide the sender a receipt for money
17 received for transmission.

18 a. The receipt must contain the following information, as applicable:

19 (1) The name of the sender;

20 (2) The name of the designated recipient;

21 (3) The date of the transaction;

22 (4) The unique transaction or identification number;

23 (5) The name of the licensee, the nationwide system unique identification
24 number, the licensee's business address, and the licensee's customer
25 service telephone number;

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

27 (7) Any fee charged by the licensee to the sender for the transaction; and

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

29 b. The receipt required by this section must be in English and in the language
30 principally used by the licensee or authorized delegate to advertise, solicit, or

1 negotiate, either orally or in writing, for a transaction conducted in person,
2 electronically, or by phone, if other than English.

3 **13-09.1-30. Notice.**

4 Every licensee or authorized delegate shall include on a receipt or disclose on the
5 licensee's website or mobile application the name and phone number of the department of
6 financial institutions and a statement that the licensee's customers can contact the department
7 of financial institutions with questions or complaints about the licensee's money transmission
8 services.

9 **13-09.1-31. Disclosures for payroll processing services.**

- 10 1. A licensee that provides payroll processing services shall:
11 a. Issue reports to clients detailing client payroll obligations in advance of the payroll
12 funds being deducted from an account; and
13 b. Make available worker paystubs or an equivalent statement to workers.
14 2. Subsection 1 does not apply to a licensee providing payroll processing services where
15 the licensee's client designates the intended recipients to the licensee and is
16 responsible for providing the disclosures required by subdivision b of subsection 1.

17 **13-09.1-32. Net worth.**

- 18 1. A licensee under this chapter shall maintain at all times a tangible net worth of the
19 greater of one hundred thousand dollars or three percent of total assets for the first
20 one hundred million dollars, two percent of additional assets for one hundred million
21 dollars to one billion dollars, and one-half percent of additional assets for over one
22 billion dollars.
23 2. Tangible net worth must be demonstrated at initial application by the applicant's most
24 recent audited or unaudited financial statements pursuant to subdivision f of
25 subsection 2 of section 13-09.1-11.
26 3. Notwithstanding the foregoing provisions of this section, the commissioner may, for
27 good cause shown, exempt, in part or in whole, any applicant or licensee from the
28 requirements of this section.

29 **13-09.1-33. Surety bond.**

- 30 1. An applicant for a money transmission license must provide, and a licensee at all
31 times must maintain, security consisting of a surety bond in a form satisfactory to the

- 1 commissioner or, with the commissioner's approval, a deposit instead of a bond in
2 accordance with this section.
- 3 2. The amount of the required security must be:
- 4 a. The greater of one hundred thousand dollars or an amount equal to one hundred
5 percent of the licensee's average daily money transmission liability in this state
6 calculated for the most recently completed three-month period, up to a maximum
7 of five hundred thousand dollars; or
- 8 b. In the event that the licensee's tangible net worth exceeds ten percent of total
9 assets, the licensee shall maintain a surety bond of one hundred thousand
10 dollars.
- 11 3. A licensee that maintains the maximum bond amount provided for in subdivision a of
12 subsection 2 may not be required to calculate its average daily money transmission
13 liability in this state for purposes of this section.
- 14 4. A licensee may exceed the maximum required bond amount pursuant to subdivision e
15 of subsection 1 of section 13-09.1-35.

16 **13-09.1-34. Maintenance of permissible investments.**

- 17 1. A licensee shall maintain at all times permissible investments that have a market value
18 computed in accordance with United States generally accepted accounting principles
19 of not less than the aggregate amount of all of its outstanding money transmission
20 obligations.
- 21 2. Except for permissible investments enumerated in subsection 1 of section 13-09.1-35,
22 the commissioner, with respect to any licensee, may by rule or order limit the extent to
23 which a specific investment maintained by a licensee within a class of permissible
24 investments may be considered a permissible investment, if the specific investment
25 represents undue risk to customers, not reflected in the market value of investments.
- 26 3. Permissible investments, even if commingled with other assets of the licensee, are
27 held in trust for the benefit of the purchasers and holders of the licensee's outstanding
28 money transmission obligations in the event of insolvency, the filing of a petition by or
29 against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110]
30 for bankruptcy or reorganization, the filing of a petition by or against the licensee for
31 receivership, the commencement of any other judicial or administrative proceeding for

1 its dissolution or reorganization, or in the event of an action by a creditor against the
2 licensee who is not a beneficiary of this statutory trust. No permissible investments
3 impressed with a trust pursuant to this subsection may be subject to attachment, levy
4 of execution, or sequestration by order of any court, except for a beneficiary of this
5 statutory trust.

6 4. Upon the establishment of a statutory trust in accordance with subsection 3 or when
7 any funds are drawn on a letter of credit pursuant to subdivision d of subsection 1 of
8 section 13-09.1-35, the commissioner shall notify the applicable regulator of each
9 state in which the licensee is licensed to engage in money transmission, if any, of the
10 establishment of the trust or the funds drawn on the letter of credit, as applicable.
11 Notice must be deemed satisfied if performed pursuant to a multistate agreement or
12 through the nationwide system. Funds drawn on a letter of credit, and any other
13 permissible investments held in trust for the benefit of the purchasers and holders of
14 the licensee's outstanding money transmission obligations, are deemed held in trust
15 for the benefit of the purchasers and holders on a pro rata and equitable basis in
16 accordance with statutes pursuant to which permissible investments are required to be
17 held in this state, and other states, as applicable. Any statutory trust must be
18 terminated upon extinguishment of all of the licensee's outstanding money
19 transmission obligations.

20 5. The commissioner by rule or by order may allow other types of investments that the
21 commissioner determines are of sufficient liquidity and quality to be a permissible
22 investment. The commissioner may participate in efforts with other state regulators to
23 determine that other types of investments are of sufficient liquidity and quality to be a
24 permissible investment.

25 **13-09.1-35. Types of permissible investments.**

26 1. The following investments are permissible under section 13-09.1-34:
27 a. Cash, including demand deposits, savings deposits, and funds in such accounts
28 held for the benefit of the licensee's customers in a federally insured depository
29 financial institution, and cash equivalents including automated clearinghouse
30 items in transit to the licensee and automated clearinghouse items or
31 international wires in transit to a payee, cash in transit via armored car, cash in

1 smart safes, cash in licensee-owned locations, debit card or credit card-funded
2 transmission receivables owed by any bank, or money market mutual funds rated
3 "AAA" by S&P Global, or the equivalent from any eligible rating service.

4 b. Certificates of deposit or senior debt obligations of an insured depository
5 institution, as defined in section 3 of the Federal Deposit Insurance Act
6 [12 U.S.C. Section 1813], or as defined under the federal Credit Union Act
7 [12 U.S.C. Section 1781].

8 c. An obligation of the United States or a commission, agency, or instrumentality
9 thereof; an obligation that is guaranteed fully as to principal and interest by the
10 United States; or an obligation or instrumentality of a state or a governmental
11 subdivision, agency, or instrumentality thereof.

12 d. The full drawable amount of an irrevocable standby letter of credit for which the
13 stated beneficiary is the commissioner that stipulates that the beneficiary need
14 only draw a sight draft under the letter of credit and present it to obtain funds up
15 to the letter of credit amount within seven days of presentation of the items
16 required by paragraph 3 of subdivision d of subsection 1.

17 (1) The letter of credit must:

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

22 [1] Bears an eligible rating or whose parent company bears an
23 eligible rating; and

24 [2] Is regulated, supervised, and examined by federal or state
25 authorities having regulatory authority over banks, credit unions,
26 and trust companies;

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

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

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

8 (2) In the event of any notice of expiration or nonextension of a letter of credit
9 issued under subparagraph d of paragraph 1 of subdivision d of
10 subsection 1, the licensee shall be required to demonstrate to the
11 satisfaction of the commissioner, fifteen days prior to expiration, that the
12 licensee maintains and will maintain permissible investments in accordance
13 with subsection 1 of section 13-09.1-34 upon the expiration of the letter of
14 credit. If the licensee is not able to do so, the commissioner may draw on
15 the letter of credit in an amount up to the amount necessary to meet the
16 licensee's requirements to maintain permissible investments in accordance
17 with subsection 1 of section 13-09.1-34. Any such draw must be offset
18 against the licensee's outstanding money transmission obligations. The
19 drawn funds must be held in trust by the commissioner or the
20 commissioner's designated agent, to the extent authorized by law, as agent
21 for the benefit of the purchasers and holders of the licensee's outstanding
22 money transmission obligations.

23 (3) The letter of credit must provide that the issuer of the letter of credit will
24 honor, at sight, a presentation made by the beneficiary to the issuer of the
25 following documents on or prior to the expiration date of the letter of credit:

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

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

29 [1] The filing of a petition by or against the licensee under the
30 federal bankruptcy code [11 U.S.C. Section 101-110], for
31 bankruptcy or reorganization;

- 1 a. Receivables that are payable to a licensee from its authorized delegates in the
2 ordinary course of business that are less than seven days old, up to fifty percent
3 of the aggregate value of the licensee's total permissible investments;
- 4 b. Of the receivables permissible under subdivision a of subsection 2, receivables
5 that are payable to a licensee from a single authorized delegate in the ordinary
6 course of business may not exceed ten percent of the aggregate value of the
7 licensee's total permissible investments; and
- 8 c. The following investments are permissible up to twenty percent per category and
9 combined up to fifty percent of the aggregate value of the licensee's total
10 permissible investments:
- 11 (1) A short-term, up to six months, investment bearing an eligible rating;
12 (2) Commercial paper bearing an eligible rating;
13 (3) A bill, note, bond, or debenture bearing an eligible rating;
14 (4) United States tri-party repurchase agreements collateralized at one hundred
15 percent or more with United States government or agency securities,
16 municipal bonds, or other securities bearing an eligible rating;
17 (5) Money market mutual funds rated less than "AAA" and equal to or higher
18 than "A-" by S&P Global, or the equivalent from any other eligible rating
19 service; and
- 20 (6) A mutual fund or other investment fund composed solely and exclusively of
21 one or more permissible investments listed in subdivisions a through c of
22 subsection 1.
- 23 d. Cash, including demand deposits, savings deposits, and funds in such accounts
24 held for the benefit of the licensee's customers, at foreign depository institutions
25 are permissible up to ten percent of the aggregate value of the licensee's total
26 permissible investments if the licensee has received a satisfactory rating in its
27 most recent examination and the foreign depository institution:
- 28 (1) Has an eligible rating;
29 (2) Is registered under the Foreign Account Tax Compliance Act;
30 (3) Is not located in any country subject to sanctions from the office of foreign
31 assets control; and

1 (4) Is not located in a high-risk or noncooperative jurisdiction as designated by
2 the financial action task force.

3 **13-09.1-36. Suspension and revocation.**

- 4 1. The commissioner may suspend or revoke a license or order a licensee to revoke the
5 designation of an authorized delegate if:
- 6 a. The licensee violates this chapter or a rule adopted or an order issued under this
7 chapter;
 - 8 b. The licensee does not cooperate with an examination or investigation by the
9 commissioner;
 - 10 c. The licensee engages in fraud, intentional misrepresentation, or gross
11 negligence;
 - 12 d. An authorized delegate is convicted of a violation of a state or federal anti-money
13 laundering statute, or violates a rule adopted or an order issued under this
14 chapter, as a result of the licensee's willful misconduct or willful blindness;
 - 15 e. The competence, experience, character, or general fitness of the licensee,
16 authorized delegate, person in control of a licensee, key individual, or responsible
17 person of the authorized delegate indicates that it is not in the public interest to
18 permit the person to provide money transmission;
 - 19 f. The licensee engages in an unsafe or unsound practice;
 - 20 g. The licensee is insolvent, suspends payment of its obligations, or makes a
21 general assignment for the benefit of its creditors; or
 - 22 h. The licensee does not remove an authorized delegate after the commissioner
23 issues and serves upon the licensee a final order, including a finding that the
24 authorized delegate has violated this chapter.
- 25 2. In determining whether a licensee is engaging in an unsafe or unsound practice, the
26 commissioner may consider the size and condition of the licensee's money
27 transmission, the magnitude of the loss, the gravity of the violation of this chapter, and
28 the previous conduct of the person involved.

29 **13-09.1-37. Suspension and revocation of authorized delegates.**

- 30 1. The commissioner may issue an order suspending or revoking the designation of an
31 authorized delegate, if the commissioner finds that:

- 1 a. The authorized delegate violated this chapter or a rule adopted or an order
2 issued under this chapter;
- 3 b. The authorized delegate did not cooperate with an examination or investigation
4 by the commissioner;
- 5 c. The authorized delegate engaged in fraud, intentional misrepresentation, or
6 gross negligence;
- 7 d. The authorized delegate is convicted of a violation of a state or federal
8 anti-money laundering statute;
- 9 e. The competence, experience, character, or general fitness of the authorized
10 delegate or a person in control of the authorized delegate indicates that it is not in
11 the public interest to permit the authorized delegate to provide money
12 transmission; or
- 13 f. The authorized delegate is engaging in an unsafe or unsound practice.
- 14 2. In determining whether an authorized delegate is engaging in an unsafe or unsound
15 practice, the commissioner may consider the size and condition of the authorized
16 delegate's provision of money transmission, the magnitude of the loss, the gravity of
17 the violation of this chapter or a rule adopted or order issued under this chapter, and
18 the previous conduct of the authorized delegate.
- 19 3. An authorized delegate may apply for relief from a suspension or revocation of
20 designation as an authorized delegate according to procedures prescribed by the
21 commissioner.

22 **13-09.1-38. Orders to cease and desist.**

- 23 1. If the commissioner determines that a violation of this chapter or of a rule adopted or
24 an order issued under this chapter by a licensee or authorized delegate is likely to
25 cause immediate and irreparable harm to the licensee, its customers, or the public as
26 a result of the violation, or cause insolvency or significant dissipation of assets of the
27 licensee, the commissioner may issue an order requiring the licensee or authorized
28 delegate to cease and desist from the violation. The order becomes effective upon
29 issuance.

1 2. The commissioner may issue an order against a licensee to cease and desist from
2 providing money transmission through an authorized delegate that is the subject of a
3 separate order by the commissioner.

4 3. An order to cease and desist remains effective and enforceable pending the
5 completion of an administrative proceeding pursuant to chapter 28-32.

6 4. An order to cease and desist expires unless the commissioner commences an
7 administrative proceeding pursuant to chapter 28-32 within ten days after it is issued.

8 **13-09.1-39. Consent orders.**

9 The commissioner may enter into a consent order at any time with a person to resolve a
10 matter arising under this chapter or a rule adopted or order issued under this chapter. A consent
11 order must be signed by the person to whom it is issued or by the person's authorized
12 representative, and must indicate agreement with the terms contained in the order. A consent
13 order may provide that it does not constitute an admission by a person that this chapter or a
14 rule adopted or an order issued under this chapter has been violated.

15 **13-09.1-40. Criminal penalties.**

16 1. A person that intentionally makes a false statement, misrepresentation, or false
17 certification in a record filed or required to be maintained under this chapter or that
18 intentionally makes a false entry or omits a material entry in such a record is guilty of a
19 class C felony.

20 2. A person that knowingly engages in an activity for which a license is required under
21 this chapter without being licensed under this chapter is guilty of a class C felony.

22 **13-09.1-41. Civil penalties.**

23 The commissioner may assess a civil penalty against a person that violates this chapter or
24 a rule adopted or an order issued under this chapter in an amount not to exceed one thousand
25 dollars per day for each day that the violation is outstanding, plus this state's costs and
26 expenses for the investigation and prosecution of the matter, including reasonable attorney's
27 fees. Each transaction in violation of this chapter and each day that a violation continues is a
28 separate violation. A civil money penalty collected under this section must be paid to the
29 department of financial institutions and deposited in the financial institutions regulatory fund.

1 **13-09.1-42. Unlicensed persons.**

2 1. If the commissioner has reason to believe that a person has violated or is violating
3 section 13-09.1-09, the commissioner may issue an order to show cause why an order
4 to cease and desist should not issue requiring that the person cease and desist from
5 the violation of section 13-09.1-09.

6 2. In an emergency, the commissioner may petition the district court of Burleigh County
7 for the issuance of a temporary restraining order ex parte pursuant to the rules of civil
8 procedure.

9 3. An order to cease and desist becomes effective upon service upon the unlicensed
10 person.

11 4. An order to cease and desist remains effective and enforceable pending the
12 completion of an administrative proceeding pursuant to chapter 28-32.

13 **13-09.1-43. Transition period.**

14 This chapter goes into effect August 1, 2023. For current licensees, the effective date is
15 upon license renewal, but no later than December 31, 2023.

16 **13-09.1-44. Definitions.**

17 For the purposes of sections 13-09.1-44 through 13-09.1-49, the following definitions apply:

18 1. "Control of virtual currency", when used in reference to a transaction or relationship
19 involving virtual currency, means the power to execute unilaterally or prevent
20 indefinitely a virtual-currency transaction.

21 2. "Exchange", used as a verb, means to assume control of virtual currency from or on
22 behalf of a person, at least momentarily, to sell, trade, or convert:

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

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

26 3. "Transfer" means to assume control of virtual currency from or on behalf of a person
27 and to:

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

29 b. Move the virtual currency from one account of a person to another account of the
30 same person; or

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

- 1 4. "United States dollar equivalent of virtual currency" means the equivalent value of a
2 particular virtual currency in United States dollars shown on a virtual-currency
3 exchange based in the United States for a particular date or period specified in this
4 chapter.
- 5 5. "Virtual currency":
- 6 a. Means a digital representation of value that:
- 7 (1) Is used as a medium of exchange, unit of account, or store of value; and
8 (2) Is not money, whether or not denominated in money; and
- 9 b. Does not include:
- 10 (1) A transaction in which a merchant grants, as part of an affinity or rewards
11 program, value that cannot be taken from or exchanged with the merchant
12 for money, bank credit, or virtual currency; or
- 13 (2) A digital representation of value issued by or on behalf of a publisher and
14 used solely within an online game, game platform, or family of games sold
15 by the same publisher or offered on the same game platform.
- 16 6. "Virtual-currency administration" means issuing virtual currency with the authority to
17 redeem the currency for money, bank credit, or other virtual currency.
- 18 7. "Virtual-currency business activity" means:
- 19 a. Exchanging, transferring, or storing virtual currency or engaging in virtual-
20 currency administration, whether directly or through an agreement with a virtual-
21 currency control-services vendor;
- 22 b. Holding electronic precious metals or electronic certificates representing interests
23 in precious metals on behalf of another person or issuing shares or electronic
24 certificates representing interests in precious metals; or
- 25 c. Exchanging one or more digital representations of value used within one or more
26 online games, game platforms, or family of games for:
- 27 (1) Virtual currency offered by or on behalf of the same publisher from which
28 the original digital representation of value was received; or
- 29 (2) Money or bank credit outside the online game, game platform, or family of
30 games offered by or on behalf of the same publisher from which the original
31 digital representation of value was received.

1 8. "Virtual-currency control-services vendor" means a person that has control of virtual
2 currency solely under an agreement with a person that, on behalf of another person,
3 assumes control of virtual currency.

4 **13-09.1-45. Scope.**

5 1. This chapter does not apply to the exchange, transfer, or storage of virtual currency or
6 to virtual-currency administration to the extent the Electronic Fund Transfer Act of
7 1978 [15 U.S.C. Sections 1693-1693r], the Securities Exchange Act of 1934
8 [15 U.S.C. Sections 78a-78oo], the Commodities Exchange Act of 1936 [7 U.S.C.
9 Sections 1-27f], or chapter 10-04 govern the activity.

10 2. Sections 13-09.1-44 through 13-09.1-49 do not apply to activity by:

11 a. A person that:

12 (1) Contributes only connectivity software or computing power to a
13 decentralized virtual currency, or to a protocol governing transfer of the
14 digital representation of value;

15 (2) Provides only data storage or security services for a business engaged in
16 virtual-currency business activity and does not otherwise engage in virtual-
17 currency business activity on behalf of another person; or

18 (3) Provides only to a person otherwise exempt from this chapter virtual
19 currency as one or more enterprise solutions used solely among each other
20 and has no agreement or relationship with a person that is an end-user of
21 virtual currency;

22 b. A person using virtual currency, including creating, investing, buying or selling, or
23 obtaining virtual currency as payment for the purchase or sale of goods or
24 services, solely:

25 (1) On its own behalf;

26 (2) For personal, family, or household purposes; or

27 (3) For academic purposes;

28 c. A person whose virtual-currency business activity with or on behalf of persons is
29 reasonably expected to be valued, in the aggregate, on an annual basis at five
30 thousand dollars or less, measured by the United States dollar equivalent of
31 virtual currency;

- 1 d. An attorney to the extent of providing escrow services to a person;
- 2 e. A title insurance company to the extent of providing escrow services to a person;
- 3 f. A securities intermediary, as defined in chapter 41-08, or a commodity
4 intermediary, as defined in chapter 41-09, that:
- 5 (1) Does not engage in the ordinary course of business in virtual-currency
6 business activity with or on behalf of a person in addition to maintaining
7 securities accounts or commodities accounts and is regulated as a
8 securities intermediary or commodity intermediary under federal law, law of
9 this state other than this chapter, or law of another state; and
- 10 (2) Affords a person protections comparable to those set forth in section
11 13-09.1-10;
- 12 g. A secured creditor under chapter 41-09 or creditor with a judicial lien or lien
13 arising by operation of law on collateral that is virtual currency, if the virtual-
14 currency business activity of the creditor is limited to enforcement of the security
15 interest in compliance with chapter 41-09 or lien in compliance with the law
16 applicable to the lien;
- 17 h. A virtual-currency control-services vendor; or
- 18 i. A person that:
- 19 (1) Does not receive compensation from a person for:
- 20 (a) Providing virtual-currency products or services; or
- 21 (b) Conducting virtual-currency business activity; or
- 22 (2) Is engaged in testing products or services with the person's own funds.
- 23 3. The commissioner may determine that a person or class of persons, given facts
24 particular to the person or class, should be exempt from this chapter, whether the
25 person or class is covered by requirements imposed under federal law on a money
26 service business.
- 27 **13-09.1-46. Conditions precedent to engaging in virtual-currency business activity.**
- 28 1. A person may not engage in virtual-currency business activity, or hold itself out as
29 being able to engage in virtual-currency business activity, with or on behalf of another
30 person unless the person is:
- 31 a. Licensed in this state by the commissioner pursuant to section 13-09.1-13; or

1 b. Exempt from licensing under section 13-09.1-02.

2 2. A person that is licensed to engage in virtual-currency business activity is engaged in
3 the business of money transmission and is subject to the requirements of this chapter.

4 **13-09.1-47. Required disclosures.**

5 1. A licensee that engages in virtual-currency business activity shall provide to a person
6 who uses the licensee's products or services the disclosures required by subsection 2
7 and any additional disclosure the commissioner by rule or order determines
8 reasonably necessary for the protection of persons. The commissioner shall determine
9 by rule or order the time and form required for disclosure. A disclosure required by this
10 section must be made separately from any other information provided by the licensee
11 and in a clear and conspicuous manner in a record the person may keep. A licensee
12 may propose for the commissioner's approval alternate disclosure as appropriate for
13 the licensee's virtual-currency business activity with or on behalf of a person.

14 2. Before establishing a relationship with a person, a licensee shall disclose, to the extent
15 applicable to the virtual-currency business activity the licensee will undertake with the
16 person, including:

17 a. A schedule of fees and charges the licensee may assess, the manner by which
18 fees and charges will be calculated if they are not set in advance and disclosed,
19 and the timing of the fees and charges;

20 b. Whether the product or service provided by the licensee is covered by:

21 (1) A form of insurance or is otherwise guaranteed against loss by an agency of
22 the United States:

23 (a) Up to the full United States dollar equivalent of virtual currency
24 purchased from the licensee or for control of virtual currency by the
25 licensee as of the date of the placement or purchase, including the
26 maximum amount provided by insurance under the federal deposit
27 insurance corporation, the national credit union administration, or
28 otherwise available from the securities investor protection corporation;
29 or

30 (b) If not provided at the full United States dollar equivalent of virtual
31 currency purchased from the licensee or for control of virtual currency

1 by the licensee, the maximum amount of coverage for each person
2 expressed in the United States dollar equivalent of the virtual
3 currency; or

4 (2) Private insurance against theft or loss, including cyber theft or theft by other
5 means;

6 c. The irrevocability of a transfer or exchange and any exception to irrevocability;

7 d. A description of:

8 (1) Liability for an unauthorized, mistaken, or accidental transfer or exchange;

9 (2) The person's responsibility to provide notice to the licensee of the transfer
10 or exchange;

11 (3) The basis for any recovery by the person from the licensee;

12 (4) General error-resolution rights applicable to the transfer or exchange; and

13 (5) The method for the person to update the person's contact information with
14 the licensee;

15 e. That the date or time when the transfer or exchange is made and the person's
16 account is debited may differ from the date or time when the person initiates the
17 instruction to make the transfer or exchange;

18 f. Whether the person has a right to stop a preauthorized payment or revoke
19 authorization for a transfer and the procedure to initiate a stop-payment order or
20 revoke authorization for a subsequent transfer;

21 g. The person's right to receive a receipt, trade ticket, or other evidence of the
22 transfer or exchange;

23 h. The person's right to at least thirty days' notice of a change in the licensee's fee
24 schedule, other terms and conditions of operating its virtual-currency business
25 activity with the person and the policies applicable to the person's account; and

26 i. That virtual currency is not money.

27 3. Except as otherwise provided in subsection 4, at the conclusion of a virtual-currency
28 transaction with or on behalf of a person, a licensee shall provide the person a
29 confirmation in a record which contains:

30 a. The name and contact information of the licensee, including information the
31 person may need to ask a question or file a complaint;

- 1 b. The type, value, date, precise time, and amount of the transaction; and
2 c. The fee charged for the transaction, including any charge for conversion of virtual
3 currency to money, bank credit, or other virtual currency.
4 4. If a licensee discloses it will provide a daily confirmation in the initial disclosure under
5 subsection 3, the licensee may elect to provide a single, daily confirmation for all
6 transactions with or on behalf of a person on that day instead of a per-transaction
7 confirmation.

8 **13-09.1-48. Property interests and entitlement to virtual currency.**

- 9 1. A licensee that has control of virtual currency for one or more persons shall maintain
10 control of virtual currency in each type of virtual currency sufficient to satisfy the
11 aggregate entitlements of the persons to the type of virtual currency.
12 2. If a licensee violates subsection 1, the property interests of the persons in the virtual
13 currency are pro rata property interests in the type of virtual currency to which the
14 persons are entitled, without regard to the time the persons became entitled to the
15 virtual currency or the licensee obtained control of the virtual currency.
16 3. The virtual currency referred to in this section is:
17 a. Held for the persons entitled to the virtual currency;
18 b. Not property of the licensee;
19 c. Not subject to the claims of creditors of the licensee; and
20 d. Deemed a permissible investment under this chapter.

21 **13-09.1-49. Additional requirement and clarifications for virtual-currency business**
22 **activities.**

- 23 1. A licensee engaged in virtual-currency business activities must comply with all
24 provisions of this chapter to the extent applicable to the licensee's activities.
25 2. A licensee engaged in virtual-currency business activities may include in its calculation
26 of tangible net worth virtual currency, measured by the average value of the virtual
27 currency in United States dollar equivalent over the prior six months, excluding control
28 of virtual currency for a person entitled to the protections pursuant to section
29 13-09.1-48.
30 3. A licensee shall maintain, for all virtual-currency business activity with or on behalf of a
31 person five years after the date of the activity, a record of:

- 1 a. Each transaction of the licensee with or on behalf of the person or for the
- 2 licensee's account in this state, including:
- 3 (1) The identity of the person;
- 4 (2) The form of the transaction;
- 5 (3) The amount, date, and payment instructions given by the person; and
- 6 (4) The account number, name, and United States postal service address of the
- 7 person, and, to the extent feasible, other parties to the transaction;
- 8 b. The aggregate number of transactions and aggregate value of transactions by
- 9 the licensee with or on behalf of the person and for the licensee's account in this
- 10 state, expressed in United States dollar equivalent of virtual currency for the
- 11 previous twelve calendar months;
- 12 c. Each transaction in which the licensee exchanges one form of virtual currency for
- 13 money or another form of virtual currency with or on behalf of the person;
- 14 d. A general ledger posted at least monthly that lists all assets, liabilities, capital,
- 15 income, and expenses of the licensee;
- 16 e. Each business-call report the licensee is required to create or provide to the
- 17 department of financial institutions or the nationwide system;
- 18 f. Bank statements and bank reconciliation records for the licensee and the name,
- 19 account number, and United States postal service address of each bank the
- 20 licensee uses in the conduct of its virtual-currency business activity with or on
- 21 behalf of the person;
- 22 g. A report of any dispute with the person; and
- 23 h. A report of any virtual-currency business activity transaction with or on behalf of a
- 24 person which the licensee was unable to complete.
- 25 4. A licensee shall maintain records required by subsection 3 in a form that enables the
- 26 commissioner to determine whether the licensee is in compliance with this chapter,
- 27 any court order, and law of this state other than this chapter.

28 **SECTION 3. REPEAL.** Chapter 13-09 of the North Dakota Century Code is repealed.