



SB 238: Money Transmission; Virtual Currency Sectional Analysis (32-GS2312\A)

Section 1 adds a section of uncodified law expressing the purpose of the bill.

Section 2 amends AS 06.55.101(a) which contains the requirement that a person may not engage in the business of money transmission without a license. It is amended to insert a citation to the exemption statute, AS 06.55.802, and to clarify that an authorized delegate may not engage in the business of money transmission if the actions taken would be outside the scope of authority conferred by the written contract required by AS 06.55.301, as repealed and reenacted pursuant to Section 8.

Section 3 repeals and reenacts AS 06.55.102 to conform with the Conference of State Bank Supervisors (CSBS) Uniform Money Transmission Modernization Act ("the model law"). This section provides the application requirements for a money transmission license and allows the Department of Commerce, Community, and Economic Development ("the department") to change or update the form to maintain consistency with Nationwide Multistate Licensing System & Registry ("NMLS" or "registry") licensing standards and practices.

Section 4 repeals and reenacts AS 06.55.105 to conform with the model law. This section contains the department's license issuance procedures, timelines, license terms, and due process procedures. It provides that if the applicant is subject to a multistate licensing process, the department may accept the investigation results of a lead investigation state.

Section 5 repeals and reenacts AS 06.55.106 to conform with the model law. It contains license renewal and renewal reporting requirements. As repealed and reenacted, AS 06.55.106 presents a change to license renewals, renewal reporting, and renewal terminology. In conjunction with proposed changes to AS 06.55.850, conforming to the model law also presents a change to fees collected by the department. These changes align with the model law's goal of uniform application of money transmission laws for licensees that operate in more than one state.

Section 6 amends AS 06.55 to add new sections AS 06.55.108, AS 06.55.109, and AS 06.55.110 to Article 1 to conform with the model law.

AS 06.55.108 concerns maintenance of money transmission licenses. It provides that licensees must continue to meet the qualifications that apply to new applicants, and that the department may suspend or revoke a license if a licensee fails to do so.

AS 06.55.109 concerns information requirements for certain individuals. This section contains information submission requirements for individuals in control of applicants or licensees, and "key individuals" as defined by the bill. It also contains background report requirements applicable to individuals who have resided outside of the United States in the last ten years.

AS 06.55.110 concerns consistent state licensing. It grants the department discretion to (1) implement licensing provisions and protocols in a manner that is consistent with other states that have adopted a multistate licensing process, (2) establish relationships or contracts that enables the department to collect and maintain records, coordinate licensing, process fees, and communicate with licensees, and (3) utilize NMLS for all aspects of licensing.

Section 7 amends AS 06.55 to add new sections to Article 2 concerning virtual currency.

AS 06.55.205 concerns the scope of AS 06.55.205 - AS 06.55.290 and contains a list of exempted activities. Notably, paragraph (b)(5) contains an exemption applicable to persons whose virtual-currency business activities on an annual basis are expected to be measured at \$5,000 or less, measured by the dollar equivalent of virtual currency. Subsection (c) grants the department discretionary authority to create additional exemptions for specific persons or classes of persons.

AS 06.55.206 concerns conditions precedent to engaging in virtual-currency business activity. This section provides that virtual-currency business activity is money transmission, and therefore, unless the virtual-currency business activity is exempt under AS 06.55.802, it requires a money transmission license.

AS 06.55.207 concerns required disclosures. These disclosures are in addition to the notice and receipt requirements for money transmission licensees found at AS 06.55.810 and AS 06.55.830. Subsection (a) grants the department discretion to require additional disclosures and to regulate the time and form required for disclosure. Subsection (a) also allows a licensee to propose alternative disclosures that are more appropriate to its business operations.

AS 06.55.208 concerns property interests and entitlements to virtual currency. AS 06.55.208(a) requires the virtual-currency business with “control” over virtual currency to maintain an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to each type of virtual currency. This section places the interests of customers of a licensee over the interests of creditors of a licensee.

AS 06.55.208 is modeled off of Section 502 of the Uniform Regulation of Virtual Currency Businesses Act (“URVCBA”).¹ Official comment to Uniform Law Commission’s (“ULC”) URVCBA provides that Section 502 (proposed AS 06.55.208) is based on Uniform Commercial Code (“UCC”) Sections 8-503 and 8-504² and that it is intended to protect the owner of virtual currency that is entrusted to a licensee. Unlike the URVCBA, the abridged version in the model law does not create a private right of action, and instead all enforcement of virtual currency violations is by the department. Official commentary further describes that this section “takes the virtual currency under the control of a licensee off the balance sheet of the virtual-currency business and beyond the business’ right to deal with it as their own property. This formulation reduces the need for greater net worth ... without sacrificing user protection.”

AS 06.55.209 concerns additional requirements and clarifications for virtual currency business activities. Subsection (b) allows a licensee engaged in virtual-currency business activity to include virtual currency in its tangible net worth calculation, measured by the average value of the dollar equivalent of the virtual currency

¹ Notably, the URVCBA was approved by the ULC in July 2017 and supplemented in 2018, and it is intended that any state enacting the URVCBA also enact the supplement. For purposes of this memo, it is important to note that the URVCBA supplement intentionally replaces Section 502 of the URVCBA, purportedly to allow greater protection of users of virtual-currency businesses and to directly apply provisions of UCC Article 8. More information is available on the Uniform Law Commissioner website, available here: <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=33019035-40b9-4859-5880-6d79bbf10162&forceDialog=0>.

² Alaska has adopted UCC, Article 8, Investment Securities at AS 45.08.101 - AS 45.08.511. UCC 8-503 and 8-504 correspond to Alaska statutes AS 45.08.503 and AS 45.08.504.

for the preceding six months. Subsections (c) and (d) contain record keeping requirements specific to virtual-currency businesses and resemble the record keeping requirements of AS 06.55.405.

AS 06.55.210 contains definitions applicable to the virtual currency sections. It is helpful to note that when hyphenated, "virtual-currency" is an adjective or modifier, as distinct from "virtual currency" as defined in proposed AS 06.55.290(5) to signify a digital representation of value that is not money.

Section 8 repeals and reenacts AS 06.55.301 concerning the relationship between a licensee and an authorized delegate to conform with the model law. It creates a requirement that prior to use of an authorized delegate, a licensee must adopt policies and procedures consistent with applicable state and federal law and must enter into a written contract with the authorized delegate that contains the provisions required by (c) of this section. It also contains provisions linking the authorized delegate's activities with those of the licensee in the event the licensee's license is suspended and for operation of the chapter's statutory trust provisions.

Section 9 amends AS 06.55.302 concerning unauthorized activities to add a joint and several liability provision applicable to persons who engage in money transmission on behalf of an unlicensed person.

Section 10 repeals and reenacts AS 06.55.401 concerning supervision. This section contains the department's powers with respect to examination and investigation of a licensee or authorized delegate. It allows the department to accept examination reports of other states, the federal government, or an independent accounting firm. It requires licensees to pay all costs associated with examinations and references the confidentiality requirements of AS 06.55.407. It eliminates the existing requirement of AS 06.55.401(a) that a notice be sent to a licensee 45 days prior to the annual examination.

Sections 11 - 14 repeal and reenact or amend subsections of AS 06.55.403 for consistency with the model law. As reenacted, AS 06.55.403 requires quarterly reports of condition to be submitted by a licensee for its own activities (subsection (a)) and the activities of its authorized delegates (subsection (b)). It maintains existing requirements for rapid reporting to the department upon knowledge of the filing of a bankruptcy petition, proceeding to revoke or suspend a license in another state or country, bond cancellation, and criminal charges brought against a licensee, authorized delegate, or "key individual" or other person in control of the licensee. It also adds a subsection allowing the department to utilize NMLS for reports required by AS 06.55.403.

"Key individual" is a term introduced by the model law in Section 62 of the bill, proposed AS 06.55.990(34) and means "any individual ultimately responsible for establishing or directing policies and procedures of the licensee, including an executive officer, manager, director, or trustee." This terminology replaces the repealed term "executive officer."

Section 15 repeals and reenacts AS 06.55.404 concerning acquisition of control of a money transmission licensee. This is a lengthy section containing procedural and reporting requirements for acquisition or transfer of control of licensees. It contains exceptions for acquisition of control that are not subject to the section, for example transitions that occur in the ordinary course of business, and the list found at subsection (j). It contains discretionary provisions for the department for ease and flexibility of administration, as well as utilization of NMLS. Subsections (n) and (o) create a streamlined acquisition of control process.

AS 06.55.404 adds a new subsection (p) regarding aggregation of interest of ownership for family members for consistency with the Model Law.

Sections 16 - 17 amend subsections (a) and (d) of AS 06.55.405 for consistency with the model law. AS 06.55.405 concerns record keeping obligations of licensees. Subsection (a) is amended to increase the recordkeeping time

period from 3 years to 5 years and to make conforming language changes. Subsection (d) is amended to make conforming language changes.

Section 18 amends AS 06.55.406(a). AS 06.55.406 concerns "money laundering reports" - this heading would be retitled "Bank Secrecy Act reports" for consistency with the model law. The primary change made by this amendment is to remove the requirement that certain money laundering, record keeping, and suspicious transaction reporting requirements be filed with the Attorney General. This amendment is consistent with the model law and may reflect that compliance with federal reporting obligations is sufficient.

Sections 19 - 22 amend subsections of AS 06.55.407 for consistency with the model law.

Section 23 adds a new subsection to AS 06.55.407 concerning when department records may be made public. AS 06.55.407 concerns confidentiality, and the edits clarify what information is confidential, what information may be made public. The amendments also remove "money services" and add "transmission" to conform with the license type changes contemplated by the bill.

Section 24 amends AS 06.55 to add new sections to Article 4. Each of these sections are components of the model law.

AS 06.55.408 concerns audited financials. This section requires licensees to submit an annual audited financial statement to the department and the requirements applicable to audited financial statements.

AS 06.55.409 concerns implementation of the chapter. Subsection (a) grants the department discretion to enter into agreements with other state and federal agencies to improve efficiencies and reduce regulatory burden; to contract, hire, or purchase software to facilitate investigations; to accept licensing, examination, or investigation reports made by federal or state agencies; and to accept audit reports of independent CPAs or qualified third-party auditors. Subsection (b) grants the department broad discretion to administer, interpret, and enforce the chapter, to adopt rules and regulations, and to recover its costs through imposition and collection of fees.

AS 06.55.410 concerns networked supervision. This section expands the department's ability to participate in multistate supervisory processes, including joint investigation.

AS 06.55.411 concerns relationship to federal law. It provides that in the event of an inconsistency between state and federal law, the federal law governs to the extent of the inconsistency. It also allows the department to issue clarifying guidance regarding inconsistencies to assist licensees in compliance with both the federal law and applicable state law.

AS 06.55.412 concerns notice and information requirements for a change in control of a key individual. This section is a regulatory tool similar to the requirements of AS 06.55.403 that contains the requirements and procedures applicable when licensees add or replace "key individuals." The department may disapprove a change of key individual if the department finds that the individual's experience, character, or integrity would not be in the best interest of the public or the licensee's customers.

Sections 25 - 30 make revisions to Article 5 of AS 06.55 to rename and broaden its scope from "Permissible Investments" to "Prudential Standards." In accordance with this change, two existing sections (AS 06.55.104 and AS 06.55.107) are repealed and reenacted, as revised, to fit within this new Article.

Section 25 amends AS 06.55.501, concerning maintenance of permissible investments, for consistency with the model law. It amends AS 06.55.501(b) to allow the department to limit specific investments held by

licensees due to risk concerns, with the exception of those permissible investments listed in AS 06.55.102. It amends AS 06.55.501(c) to add additional language to protect the beneficiaries of statutory trusts from actions by creditors of licensees.

Section 26 amends AS 06.55.501 to add a new subsection (d) concerning establishment and termination of statutory trusts and related department obligations. It also adds a new subsection (e) that allows the department to allow additional permissible investments and to participate with other state regulators to identify permissible investments.

Sections 27 - 28 amend subsections (a) and (b) of AS 06.55.502, concerning permissible investments, for consistency with the model law. Subsection (a) creates a list of permissible investments that may be amended or modified by the department. Subsection (b) is repealed and reenacted to contain a list of investments that are permissible to the extent specified within allowable aggregate values for each investment category as a component of a licensee's total investment portfolio.

The revisions to AS 06.55.502(a)(1) incorporate cash equivalents including Automated Clearing House (ACH) items in transit to licensees and payees, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, and debit card or credit card funded transmission receivables owed by any bank. The inclusion of these specific cash equivalent types is intended by CSBS to resolve disagreement between industry and states regarding derecognition of cash transactions in transit for accounting purposes. Because ACH funds are in the banking system, the model law defines cash in transit via ACH as a permissible investment, thereby ensuring that licensees are not obligated to raise additional funds to cover funds that are in the banking system.

AS 06.55.502(a) would also be amended to add paragraph (4) to include letters of credit as a permissible investment type. In conjunction with Section 29, which lists the requirements for letters of credit allowed by AS 06.55.502(a)(4), the addition of letters of credit is intended by CSBS to create a mechanism that allows states to make consumers whole without seizing assets through bankruptcy. In consideration that a licensee may operate in multiple states, the letter of credit is intended as single vehicle to allow recovery, as needed, for customers in various states.

Finally, AS 06.55.502(a) is amended to allow excess bonding as a permissible investment type.

Section 29 amends AS 06.55.502 to add a new subsection (d) containing the requirements for permissible letters of credit.

Section 30 amends AS 06.55 to add new sections to Article 5. As described above, existing versions of these statutes can be found in Article 1.

AS 06.55.505 concerns applicable forms of security (AS 06.55.104). As proposed, this section is a hybrid of the model and existing law. It adopts the model law's approach that requires licensees to hold a security bond, or with the department's approval, a deposit, in an amount equal to the licensee's average daily money transmission liability in the state. To avoid calculation of average daily money transmission liability, licensees may hold a bond in the maximum amount of \$1,000,000. The bill varies from the model law in the following ways: (1) the model law would set the maximum bond amount at \$500,000; (2) it requires that the surety bond be obtained from a surety company authorized to do business in Alaska; and (3) it requires that surety bond to be maintained for as long as the department specifies, but no less than 5 years.

AS 06.55.506 concerns net worth (AS 06.55.107). It is a significant expansion of net worth requirements from existing law, which only requires applicants to maintain a net worth of \$25,000 in accordance with generally accepted accounting principles. This section would require licensees to maintain tangible net worth based upon tiered levels of total assets held. It requires applicants to demonstrate net worth at application and allows the department to exempt applicants or licensees from net worth requirements.

Section 31 amends AS 06.55.601 for consistency with the model law. These changes are limited to deletion of unnecessary language and insertion of new terms, such as "key individual" and replacement of "transmission" for "services."

Section 32 amends AS 06.55.601 by adding a new subsection allowing a licensee to apply for relief from suspension or revocation of a license.

Section 33 amends AS 06.55.602 concerning suspension and revocation of authorized delegates for consistency with the model law. These edits are limited to replacing "money services" with "money transmission."

Section 34 amends AS 06.55.602 by adding a new subsection allowing an authorized delegate to apply for relief from a suspension or revocation of designation as an authorized delegate.

Sections 35 - 37 amend subsections of AS 06.55.603 for consistency with the model law. These edits are limited to conforming language changes such as deletion of "money services" and insertion of "transmission."

Section 38 amends AS 06.55.605 concerning civil penalties to allow the department to assess its costs and expenses for investigation and prosecution, including attorney's fees, as part of the civil penalty assessment allowed under this section.

Section 39 amends AS 06.55.606 concerning criminal penalties for consistency with the model law. These amendments are limited to insertion of the word "such" and deletion of unnecessary language.

Sections 40 - 41 amend subsections of AS 06.55.607 to remove citations to AS 06.55.201, which is repealed pursuant to Section 64. Existing AS 06.55.201 contains the currency exchange license requirement. This license type has been eliminated in the bill in favor of one license type, for which currency exchange is a permissible activity.

Section 42 amends AS 06.55.702(a) concerning hearings for consistency with the model law. These amendments are limited to deletion of "money services" and a citation to AS 06.55.702(b), which is repealed by Section 64 of the bill.

Section 43 amends AS 06.55.802 for consistency with the model law. This section extensively revises existing AS 06.55.802 concerning licensing "exclusions." In addition to renaming the section to "Exemptions," proposed Section 43 would add six new exemption types and would allow the department to add additional exemptions if "in the public interest" and if regulation is unnecessary for the purposes of the chapter. Some of the exemptions are added to allow businesses that provide money transmission as an ancillary service are not required to hold licenses (e.g. insurance companies, title companies, and attorneys). Others identify employees, third-party services providers, agents of payees, and intermediaries as exempt in certain circumstances. Though the list of exemption is lengthy, CSBS recommends consistent adoption of exemptions so that compliance regimes are consistent from state-to-state.

Section 44 amends AS 06.55 by adding a new section AS 06.55.803 allowing the department to require a person who claims an exemption to provide information and documentation in support thereof.

Section 45 amends AS 06.55.810 concerning required notices. The amendments require licensees and authorized delegates to provide customers with notices of how to file a complaint and allows the department to establish the format and content requirements for notices.

Section 46 amends AS 06.55.810 by adding a new subsection that requires licensees and authorized delegates include on a receipt or through disclosure on the licensee's website or mobile application, the name and phone number of the department and a statement that customers may contact the department with questions or complaints about the licensee or authorized delegate's services.

Section 47 repeals and reenacts AS 06.55.830, concerning receipts, for consistency with the model law. Subsections (a) - (c) contain content and format requirements for transaction receipts and define "receipt" for purposes of the section. Receipts are required to be in English and any other language principally used by the licensee or authorized delegate to negotiate the transaction conducted. Subsection (d) contains exceptions to the receipt requirement.

Section 48 amends AS 06.55 to add a new section, AS 06.55.835, concerning timely transmission. This section is new to the model law and requires licensees to forward money received for transmission in accordance with the agreement between the licensee and sender unless the licensee has a reasonable basis to believe the sender may be a victim of fraud or other crime. The licensee is also required to respond to inquiries from the sender with the reason for the failure to forward money unless doing so would violate a state or federal law.

Section 49 repeals and reenacts AS 06.55.840 concerning refunds to contain the language of the model law.

Section 50 amends AS 06.55 to add a new section AS 06.55.845 concerning required disclosures for payroll processing services. Subsection (a) contains disclosure requirements and subsection (b) provides that the disclosure requirements do not apply in certain circumstances.

Sections 51 - 52 amend AS 06.55.850(b) for consistency with the model law. These amendments are limited to deletion of citations and language related to license types and fees that are intentionally repealed by Section 64.

Sections 53 - 60 amend definitions found in AS 06.55.990 for consistency with the model law. These changes include incorporation of the words "in this state" to ensure AS 06.55 protects Alaskan consumers. Revisions are made to align the language of AS 06.55 with the model law, including an exception for loyalty reward cards, amends the definition of control to at least 10% of ownership, and the amended definition of "stored value."

Section 61 amends AS 06.55.990 to add definitions for terms introduced by the model law. These terms include "acting in concert," "average daily money transmission liability," "Bank Secrecy Act," "closed loop stored value," "control," "eligible rating," "eligible rating service," "in this state," "key individual," "passive investor," "payroll processing services," and "tangible net worth."

Section 62 amends AS 06.55.995 to refer to the model law as the Alaska Uniform Money Transmission Modernization Act instead of the Alaska Uniform Money Services Act.

Section 63 repeals a number of sections of AS 06.55. As described above, AS 06.55.104 and AS 06.55.107 are repealed and reenacted in Article 5 concerning prudential standards. All of the statutes in existing Article 2 concerning currency exchange licenses are repealed, and currency exchange was added to the definition of "money transmission." Section 64 also repeals AS 06.55.890, which contains definitions applicable to AS 06.55.820 - 06.55.840; these definitions are no longer necessary following amendment to these sections. Section 64 repeals definitions for "currency exchange" and "currency exchange licensee" as no longer necessary. It also repeals the definitions for "executive officer," "mobile location," "money services," "money services license," "money services licensee," and "outstanding."

Sections 64 - 68 are transitional provisions amending uncodified law to avoid interference with existing contracts, to allow a transition period for holders of current money services licenses, to add a transition period for payroll processors, to allow adoption of transitional regulations by the department, and to instruct the revisor of statutes to amend certain headings.

Section 69 provides for an immediate effective date for Section 67, which would allow the department to begin the regulation promulgation process.

Section 70 provides for an effective date of January 1, 2023.