



Sectional Analysis HB 86 version A

An Act Relating to Money Transmission; Virtual Currency

The proposed bill is not a simple repeal and reenactment of AS 06.55. Instead, it is a line-by-line overhaul of the Act carefully considering the Model Law and selectively adopting and revising the statutes. The bill repeals the currency exchange license and includes that activity in the definition of money transmission so only one license type will be required in AS 06.55 going forward.

- **Section 1.** Adds a section of uncodified law explaining the purpose of the bill.
- **Section 2.** Amends AS 06.05.101(a) requires a license to engage in the business of money transmission (MT). The amendment inserts a citation to the exemption statute, AS 06.55.802, and clarifies that an authorized delegate may not engage in MT if the actions taken are outside the scope of the exemption.
- **Section 3.** Repeals and reenacts AS 06.55.102 to conform with the Model Law providing application requirements for a MT license and allows the Department of Commerce, Community, and Economic Development (DCCED or the department) to change or update the forms be consistent with licensing requirements in NMLS.
- **Section 4.** Repeals and reenacts AS 06.55.105 to conform with the Model Law and provides that if the applicant is subject to a multistate licensing process, the department may accept investigation results of the lead investigation state.
- **Section 5.** Repeals and reenacts AS 06.55.106 to conform with the Model Law changing license renewal, renewal reporting and renewal terminology. Fees collected at the time of renewal will change with details to be prescribed by the department through regulation.
- **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 states that licensees must continue to meet the qualifications that apply to new applicants and states that the department may suspend or revoke a license if a licensee fails to do so.

AS 06.55.109 contains submission requirements for individuals in control of applicants or licensees, and key individuals defined by the bill. Criminal background check report requirements are also included for individuals who have resided outside of the United States (US) in the last ten years.

AS 06.55.110 grants the department discretion to:

1. Implement licensing provisions consistent with other states that have adopted a multistate licensing process;

2. establish relationships or contracts to collect and maintain records, coordinate licensing, process fees, and communicate with licensees, and
3. utilize the NMLS for all aspects of licensing.

➤ **Section 7.** Amends AS 06.55 to add new sections to Article 1A concerning virtual currency derived from the Model Law. Virtual Currency (VC) Business Activity replaces Currency Exchange Licenses as the heading for Article 1A. AS 06.55.150 – 06.55.170 provide the details of what is considered and what is not considered licensed activity for companies engaging in VC business activity. The bill will allow regulation and supervision of persons that issue VC or that provide services that allow others to transfer VC, provide exchange services to the public, or offer to take custody of VC for other persons.

AS 06.55.150 provides that VC business activity is MT and unless exempt, the activity requires a MT license.

AS 06.55.155 concerns required disclosures granting the department discretion to require additional disclosures and to regulate the time and form required for disclosure.

AS 06.55.160 requires VC business with control over VC to maintain an amount of each type of VC sufficient to satisfy the aggregate entitlements of the persons to each type of VC ensuring consumer protection and reducing regulatory burden on the licensee without increasing net worth requirements.

AS 06.55.165 allows a licensee engaged in VC business activity to include VC in its tangible net worth calculation and details record keeping requirements specific to VC businesses.

AS 06.55.170 contains a list of exempted activities and provides an exemption for business activity of \$5,000 or less.

- **Section 8.** Repeals and reenacts AS 06.55.301 creating a requirement that a licensee adopt policies and procedures consistent with applicable state and federal law prior to using an authorized delegate and provides details stating that a licensee must enter into a contract with an authorized delegate with a list of provisions.
- **Section 9.** Amends AS 06.55.302 concerning unauthorized activities and liability provisions that apply to persons engaging in MT on behalf of an unlicensed person.
- **Section 10.** Amends AS 06.55.401 relating to supervision and the department's powers with respect to examination. It allows the department to accept examination reports from other states, the federal government, or an independent accounting firm. This section requires licensees to pay all costs associated with examinations, references confidentiality requirements, and eliminates the existing requirement to notify a licensee 45 days prior to an examination.
- **Sections 11 - 14.** Repeals and reenacts or amends subsections of AS 06.55.403 for consistency with the Model Law. It requires quarterly reports of condition for a licensee's activities and their authorized delegates. It maintains existing requirements for immediate reporting knowledge of filing a bankruptcy petition, a proceeding to revoke or suspend a license in another state or country, bond cancellation and criminal charges. Allows the department to utilize the NMLS for reporting required by AS 06.55.403.

Executive officer is replaced and repealed utilizing key individual, a term introduced by the Model Law which means "any individual ultimately responsible for establishing or directing policies and procedures of the licensee, including an executive officer, manager, or trustee."

- **Section 15.** Repeals and reenacts AS 06.55.404 regarding acquisition of control of a MT licensee containing procedural and reporting requirements for the acquisition or transfer of control of licensees. It allows exceptions for acquisition of control and contains discretionary provisions for the department for ease and flexibility of administration and the utilization of the NMLS. It adds details for aggregation of interest of ownership for family members for consistency with the Model Law.

Sections 16 and 17. Amends AS 06.55.405(a) and (d) for consistency with the Model Law. It details record keeping obligations of licensees, increasing the time period from 3 years to 5 years, and makes conforming language changes.

- **Section 18.** Amends AS 06.55.406(a) concerning money laundering reports retitling the heading to Bank Secrecy Act reports for consistency with the Model Law. Remove the requirement that certain money laundering, record keeping, and suspicious transaction reporting requirements be filed with the Attorney General.
- **Sections 19 - 22.** Amends AS 06.55.407 for consistency with the Model Law.
- AS 06.55.407(d) was retained and slightly amended because it contains guidance that is helpful regarding when a licensee or authorized delegate may disclose financial information provided to the licensee or authorized delegate by a customer.
- **Section 23.** Adds a new subsection (f) to AS 06.55.407 stating when department records may be made public and what information is confidential.
- **Section 24.** Amends AS 06.55 to add new sections to article 4 from the Model Law.

AS 06.55.408 requires licensees to submit an annual audited financial statement to the department within 90 days after the end of the licensee's fiscal year.

AS 06.55.409(a) grants the department discretion to enter into agreements with other state and federal agencies to improve efficiencies and reduce regulatory burden.

AS 06.55.409(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 expands the department's ability to participate in multistate supervisory processes such as joint investigations.

AS 06.55.411 provides that in the event of an inconsistency between state and federal law, the federal law governs to the extent of the inconsistency.

AS 06.55.412 contains the requirements and procedures applicable when a licensee adds or replaces a key individual allowing the department to disapprove a change of key individual due to certain criteria.

- **Sections 25 - 30.** Revises article 5 of AS 06.55 to rename and broaden its scope from Permissible Investments to Prudential Standards. Two existing sections (AS 06.55.104 and 06.55.107) are repealed and reenacted, as revised, to fit in the new article. The level of permissible investments required by a licensee are detailed in AS 06.55.502.

- **Section 25.** Amends AS 06.55.501 to allow the department to limit specific investments held by licensees due to risk concerns, with the exception of permissible investments listed in AS 06.55.102. AS 06.55.501(c) adds language to protect beneficiaries of statutory trusts from actions by creditors of licensees.
- **Section 26.** Amends AS 06.55.501 to add a new subsection (d) regarding the establishment and termination of statutory trusts and related department obligations. Subsection (e) was added, and it allows the department to allow additional permissible investments and to participate with other state regulators to identify permissible investments.
- **Section 27 and 28.** Amends subsections (a) and (b) of AS 06.55.502 concerning permissible investments for consistency with the Model Law.

Subsection (a) does the following:

1. Incorporates ACH items in transit to licensees and payees, cash in transit via armored car, cash in smart safes, etc. ACH funds are in the banking system and the Model Law defines cash in transit via ACH as a permissible investment;
2. allows letters of credit as a permissible investment; and
3. allows excess bonding as a permissible investment type.

Subsection (b) is repealed and reenacted to include a list of investments that are permissible up to a certain aggregate value for each investment category as a component of a licensee's total investment portfolio.

- **Section 29.** Amends AS 06.55 to add a new section to article 5.

AS 06.55.503 contains the requirements for letters of credit to align with the Model Law.

Amends AS 06.55 to add new sections to article 5.

AS 06.55.505 proposes applicable forms of security (AS 06.55.104) and is a hybrid of the Model Law and the existing Act. It requires a licensee to hold a security bond or with the department's approval, a deposit, with a maximum amount of \$1,000,000 and be maintained for no less than 5 years with the details to be determined by the department in regulation or order.

AS 06.55.506 provides a significant expansion of net worth requirements from \$25,000 to a new net worth based on a tiered level of total assets held, requiring a licensee to demonstrate net worth at application. It also allows the department to exempt applicants or licensees from net worth requirements.

- **Section 30.** Amends AS 06.55.601 for consistency with the Model Law regarding the suspension and revocation of a license by deleting unnecessary language and inserting new terms such as key individual and the replacement of transmission for services.
- **Section 31.** Amends AS 06.55.601 by adding a new subsection (c) that allows a licensee to apply for relief from a suspension or revocation of a license.
- **Section 32.** Amends AS 06.55.602 for consistency with the Model Law, replacing money services with money transmission.

- **Section 33.** Amends AS 06.55.602 by adding a new subsection (c) for consistency with the Model Law allowing an authorized delegate to apply for relief from a suspension or revocation of a license.
- **Sections 34 - 36.** Amends AS 06.55.603 for consistency with the Model Law conforming language such as deleting money services and inserting money transmission.
- **Section 37.** Amends AS 06.55.605 regarding civil penalties allowing the department to assess its costs and expenses for investigation.
- **Section 38.** Amends AS 06.55.606(b) for consistency with the Model Law conforming language such as deleting money services and inserting money transmission.
- **Section 39.** Amends AS 06.55.606(c) for consistency with the Model Law conforming language such as deleting money services and inserting money transmission.
- **Sections 40 and 41.** Amends subsections of AS 06.55.607 to remove citations to AS 06.55.201, which is repealed. The existing AS 06.55.201 contains the currency exchange license requirements and this license is being eliminated in the bill in favor of one license type including currency exchange as a money transmission activity.
- **Section 42.** Amends AS 06.55.702(a) concerning hearings for consistency with the Model Law deleting money services and a citation to AS 06.55.702(b) which is repealed in the bill.
- **Section 43.** Amends AS 06.55.802 for consistency with the Model Law revising licensing exclusions and renames the section to exemptions. It adds new exemption types and would allow the department to add additional exemptions if it is in the public interest creating consistency from state-to-state. It also adds the term federally insured depository financial institution for consistency with other statutes the division regulates under AS 06.60.990(9).
- **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 demonstrating the claimed exemption.
- **Section 45.** Amends AS 06.55.810 regarding notices requiring 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 required in the notices.
- **Section 46.** Amends AS 06.55.810 by adding a new subsection (d) 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 on how customers can contact the department with questions or complaints.
- **Section 47.** Amends AS 06.55 by adding a new section AS 06.55.815 concerning in-state determination of the location of a person requesting a transaction.
- **Section 48.** Repeals and reenacts AS 06.55.830 regarding receipts for consistency with the Model Law. Subsections (a) – (b) include content and format requirements for transaction receipts and define receipt. Receipts are required to be in English and any other language principally used by the licensee or authorized delegate to negotiate a transaction. Subsection (c) describes exceptions to the receipt requirement including stored value. Subsection (d) provides a definition of receipt.

- **Section 49.** Amends AS 06.55 to add a new section, AS 06.55.835 concerning timely transmission requiring licensees to forward money received for transmission in accordance with the agreement between the licensee and sender unless the licensee determines there may be fraud involved or another crime. The licensee is required to respond to inquiries from the sender with the reason for the failure to forward money unless doing so violates a state or federal law.
- **Section 50.** Repeals and reenacts AS 06.55.840 concerning refunds for consistency with the Model Law.
- **Section 51.** Amends AS 06.55.850(b) for consistency with the Model Law. The amendments are significant and allow the department greater flexibility in the assessment of fees.
- **Section 52.** Amends AS 06.55.850(c) concerning conducting a review annually of each fee level to determine if fees are sufficient to cover the cost of the administration of this chapter.
- **Section 53.** Amends AS 06.55.850 by adding a new subsection (f) that states an annual renewal fee must be based on a licensee's total volume of money transmission in the state with the annual renewal fee to be determined by the department by regulation or order.
- **Sections 54 - 61.** Amends definitions found in AS 06.55.990 for consistency with the Model Law. Changes include the incorporation of the words in this state to ensure AS 06.55 protects Alaska consumers and insuring revisions are made to align the language of the Act with the model law. It also includes an exception for a loyalty reward card, amends the definition of control to at least 25% of ownership and amends the definition of stored value.
- **Section 62.** Amends AS 06.55.990 to renumber and add definitions for terms introduced by the Model Law including the following terms:
 1. Accredited state
 2. Acting in concert
 3. Average daily money transmission liability
 4. Bank Secrecy Act
 5. Closed loop stored value
 6. Control of virtual currency
 7. Dollar equivalent
 8. Eligible rating
 9. Eligible rating service
 10. Federally insured depository financial institution
 11. In this state
 12. Individual
 13. Key individual
 14. Passive investor
 15. Payroll processing services
 16. Registry
 17. Tangible net worth
 18. Virtual currency
- **Section 63.** Amends AS 06.55.995 to refer to the Act or Chapter as the Alaska Uniform Money Transmission Modernization Act instead of the Alaska Uniform Money Services Act.
- **Section 64.** Amends AS 12.62.400(b) to read that an applicant under AS 06.55 may submit fingerprints to the registry.

- **Section 65.** Repeals several sections in AS 06.55. AS 06.55.104 and AS 06.55.107 are repealed and reenacted in Article 5 concerning prudential standards. All statutes in Article 2 regarding currency exchange licenses are repealed as the activity was added to the definition of money transmission. AS 06.55.890 and AS 06.55.990 contains definitions that are no longer necessary.
- **Section 66 – 68.** are transitional provisions amending uncodified law to avoid interference with existing contracts, to allow a transitional period for holders of existing money services licenses and for payroll processors, to allow adoption of transitional regulations by DCCED, and to instruct the revisor of statutes to amend certain headings.
- **Section 69.** provides for an immediate effective date for sec. 68, which would allow DCCED to begin the regulation promulgation process.
- **Section 70** provides for an effective date of January 1, 2024.