



2022 South Dakota Legislature

Senate Bill 47

Introduced by: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation

1 **An Act to revise certain provisions regarding money transmission.**

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

3 **Section 1. That § 51A-17-1 be AMENDED:**

4 **51A-17-1.** Terms used in this chapter mean:

- 5 (1) "Applicant," any person filing an application for a license under this chapter;
- 6 (2) "Authorized delegate," any entity designated by the licensee under the provisions
7 of this chapter to sell or issue payment instruments or engage in the business of
8 transmitting money on behalf of a licensee;
- 9 (3) ~~"Control," ownership of, or the power to vote, twenty-five percent or more of the
10 outstanding voting securities of a licensee or controlling person. For purposes of
11 determining the percentage of a licensee controlled by any person, there shall be
12 aggregated with the person's interest the interest of any other person controlled
13 by such person or by any spouse, parent, or child of such person;~~
- 14 (4) "Controlling person," any person in control of a licensee;
- 15 ~~(5)~~(4) "Director," the director of the Division of Banking;
- 16 ~~(6)~~(5) "Division," the Division of Banking;
- 17 ~~(7)~~(6) "Electronic instrument," any card or other tangible object for the transmission or
18 payment of money that contains a microprocessor chip, magnetic stripe, or other
19 means for the storage of information, that is prefunded, and for which the value is
20 decremented upon each use. The term does not include a card or other tangible
21 object that is redeemable by the issuer in goods or services;
- 22 ~~(8)~~(7) "Executive officer," the licensee's president, chair of the executive committee,
23 senior officer responsible for the licensee's business, chief financial officer, and
24 any other person who performs similar functions;
- 25 ~~(9)~~(8) "Key shareholder," any person, or group of persons acting in concert, who is the
26 owner of twenty-five percent or more of any voting class of an applicant's stock;

- 1 ~~(10)~~(9) "Licensee," any person licensed pursuant to this chapter;
- 2 ~~(11)~~(10) "Material litigation," any litigation that, according to generally accepted
3 accounting principles, is deemed significant to an applicant's or licensee's financial
4 health and would be required to be referenced in that entity's annual audited
5 financial statements, report to shareholders, or similar documents;
- 6 ~~(12)~~(11) "Monetary value," any medium of exchange, whether or not redeemable in
7 money;
- 8 ~~(13)~~(12) "Money transmission," engagement in the business of the sale or issuance of
9 payment instruments or stored value or of receiving money or monetary value for
10 transmission to a location within or outside the United States by any means,
11 ~~including wire, facsimile, or electronic transfer;~~
- 12 ~~(13A)~~(13) "Nationwide mortgage licensing system and registry," a licensing system
13 developed and maintained by the Conference of State Bank Supervisors and the
14 American Association of Residential Mortgage Regulators for the licensing and
15 registration of licensed mortgage loan originators and other regulated entities;
- 16 (14) "Outstanding payment instrument," any payment instrument issued by the licensee
17 which has been sold in the United States directly by the licensee or any payment
18 instrument issued by the licensee which has been sold by an authorized delegate
19 of the licensee in the United States, which has been reported to the licensee as
20 having been sold, and which has not yet been paid by or for the licensee;
- 21 (15) "Payment instrument," any electronic or written check, draft, money order,
22 travelers check, or other electronic or written instrument or order for the
23 transmission or payment of money, sold or issued to one or more persons, whether
24 or not such instrument is negotiable. The term, payment instrument, does not
25 include any credit card voucher, any letter of credit, or any instrument which is
26 redeemable by the issuer in goods or services;
- 27 (16) "Remit," either the direct payment of the funds to the licensee or its representatives
28 authorized to receive those funds, or the deposit of the funds in a bank, credit
29 union, savings and loan association, or other similar financial institution in an
30 account specified by the licensee;
- 31 (17) "Security device," any surety bond, irrevocable letter of credit, or similar security
32 device;
- 33 (18) "Stored value," monetary value that is evidenced by an electronic record. Stored
34 value does not include any item that is redeemable by the issuer or its affiliates in
35 goods or services of the issuer or its affiliates;

- 1 (19) "Tangible net worth," aggregate assets of a licensee excluding all intangible assets,
2 less liabilities, as determined in accordance with United States generally accepted
3 accounting principles.

4 **Section 2. That chapter 51A-17 be amended with a NEW SECTION:**

5 For purposes of this chapter, the term, control, means:

- 6 (1) The power to vote, directly or indirectly, at least twenty-five percent of the
7 outstanding voting shares or voting interests of a licensee or controlling person;
8 (2) The power to elect or appoint a majority of key individuals or executive officers,
9 managers, directors, trustees, or other persons exercising managerial authority of
10 a licensee or controlling person; or
11 (3) The power to exercise, directly or indirectly, a controlling influence over the
12 management or policies of a licensee or controlling person.

13 A person is presumed to exercise controlling influence when the person holds the
14 power to vote, directly or indirectly, at least ten percent of the outstanding voting shares
15 or voting interests of a licensee or controlling person. A person presumed to exercise
16 controlling influence as defined by this section may rebut the presumption of control if the
17 person is a passive investor.

18 To determine the percentage of a licensee or controlling person controlled by any
19 other person, the person's interest must be aggregated with the interest of the person's
20 spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-
21 law, brothers- and sisters-in-law, and any other person who shares the person's home.

22 **Section 3. That chapter 51A-17 be amended with a NEW SECTION:**

23 For purposes of this chapter, the term, passive investor, means a person that:

- 24 (1) Does not have the power to elect a majority of key individuals or executive officers,
25 managers, directors, trustees, or other persons exercising managerial authority of
26 a licensee or controlling person;
27 (2) Is not employed by and does not have any managerial duties of the licensee or
28 controlling person;
29 (3) Does not have the power to exercise, directly or indirectly, a controlling influence
30 over the management or policies of a licensee or controlling person; and
31 (4) Either:
32 (a) Attests to subdivisions (1), (2), and (3), in a form and in a medium
33 prescribed by the director; or

1 (b) Commits to the passivity characteristics of subdivisions (1), (2), and (3) in
2 a written document.

3 **Section 4. That § 51A-17-6 be AMENDED:**

4 **51A-17-6.** Each licensee under this chapter shall maintain at all times ~~have a net~~
5 ~~worth of not less than one hundred thousand dollars, calculated in accordance with~~
6 ~~generally accepted accounting principles~~ a tangible net worth of the greater of one
7 ~~hundred thousand dollars or three percent of total assets for the first one hundred million~~
8 ~~dollars, two percent of additional assets from one hundred million dollars to one billion~~
9 ~~dollars, and one-half of one percent of additional assets over one billion dollars. Tangible~~
10 ~~net worth must be demonstrated in an initial application by the applicant's most recent~~
11 ~~audited financial statement pursuant to §§ 51A-17-13(8) and 51A-17-14(5).~~

12 The director has the authority to exempt, in whole or in part, any applicant or
13 licensee from the requirements of this section for good cause.

14 **Section 5. That § 51A-17-10 be AMENDED:**

15 **51A-17-10.** Each licensee under this chapter shall at all times possess permissible
16 investments having an aggregate market value, calculated in accordance with United
17 States generally accepted accounting principles, of not less than the aggregate face
18 amount of all outstanding payment instruments and stored value issued or sold by the
19 licensee in the United States. ~~This requirement~~ A licensee transmitting virtual currencies
20 shall hold like-kind virtual currencies of the same volume as that held by the licensee but
21 that is obligated to consumers, in lieu of the permissible investments otherwise required
22 in this section. A licensee conducting money transmission activities shall maintain
23 applicable amounts and types of permissible investments at all times. The requirements
24 of this section may be waived by the director if the dollar volume of a licensee's
25 outstanding payment instruments and stored value does not exceed the security devices
26 posted by the licensee pursuant to § 51A-17-8.

27 Permissible investments, even if commingled with other assets of the licensee,
28 ~~shall be deemed by operation of law to~~ must be held in trust for the benefit of the
29 purchasers and holders of the licensee's outstanding payment instruments in the event of
30 the bankruptcy of the licensee.

31 **Section 6. That § 51A-17-22 be AMENDED:**

1 **51A-17-22.** Within fifteen business days of the occurrence of any one of the
2 events listed in this section, a licensee shall ~~file a written report with the director~~
3 electronically file an amendment or an advance change notice through the nationwide
4 mortgage licensing system and registry describing the event and its expected impact on
5 the licensee's activities in the state. ~~Such~~ The events include:

- 6 (1) Any material changes in information provided in a licensee's application or renewal
7 report;
- 8 (2) The filing for bankruptcy or reorganization by the licensee;
- 9 (3) The institution of revocation or suspension proceedings against the licensee by any
10 state or governmental authority with regard to the licensees' money transmission
11 activities;
- 12 (4) Any felony indictment of the licensee or any of its key officers or directors related
13 to money transmission activities; and
- 14 (5) Any felony conviction of the licensee or any of its key officers or directors related
15 to money transmission activities.

16 **Section 7. That § 51A-17-23 be AMENDED:**

17 **51A-17-23.** A licensee shall ~~give the director written notice~~ electronically file an
18 advance change notice through the nationwide mortgage licensing system and registry of
19 a proposed change of control within fifteen days after learning of the proposed change of
20 control and request approval of the acquisition. After review of a request for approval, the
21 director may require the licensee to provide additional information concerning the
22 proposed persons in control of the licensee. The additional information ~~shall be~~ is limited
23 to the same types required of the licensee or persons in control of the licensee as part of
24 its original license or renewal application. The director shall approve a request for change
25 of control if, after investigation, the director determines that the person or group of
26 persons requesting approval has the competence, experience, character, and general
27 fitness to operate the licensee or person in control of the licensee in a lawful and proper
28 manner and that the interests of the public will not be jeopardized by the change of
29 control.

30 **Section 8. That § 51A-17-27 be AMENDED:**

31 **51A-17-27.** ~~The director may conduct an annual on-site examination of a licensee~~
32 ~~upon reasonable notice to the licensee. The director may examine a licensee without prior~~
33 ~~notice if the director has a reasonable basis to believe that the licensee is in noncompliance~~

1 ~~with this chapter. If the director concludes that an on-site examination of a licensee is~~
2 ~~necessary, the licensee shall pay all reasonably incurred costs of such examination. The~~
3 ~~on-site examination may be conducted in conjunction with examinations to be performed~~
4 ~~by representatives of any governmental agency. The director, in lieu of an on-site~~
5 ~~examination, may accept the examination report of any governmental agency, and reports~~
6 ~~so accepted are considered for all purposes as an official report of the director. The director~~
7 ~~may waive an on-site examination and only require a self-examination or a report~~
8 ~~prepared by an independent accounting firm. If a licensee conducts a self-examination,~~
9 ~~the licensee shall provide any information requested under oath and on forms provided by~~
10 ~~the division. The reasonable expenses incurred by the division, any governmental agency,~~
11 ~~or an independent licensed or certified public accountant in making such examination or~~
12 ~~report shall be borne by the licensee. The director may conduct an examination or~~
13 ~~investigation of a licensee or authorized delegate or otherwise take independent action~~
14 ~~authorized by this chapter, rule adopted under this chapter and promulgated pursuant to~~
15 ~~chapter 1-26, or order issued under this chapter that is reasonably necessary to administer~~
16 ~~and enforce this chapter, rules adopted under this chapter and promulgated pursuant to~~
17 ~~chapter 1-26, and other applicable law. The director may:~~

- 18 (1) Conduct an examination either on-site or off-site;
19 (2) Conduct an examination in conjunction with an examination conducted by
20 representatives of another state agency, an agency of another state, or the federal
21 government;
22 (3) Accept the examination report of another state agency, agency of another state,
23 or the federal government, or a report prepared by an independent accounting
24 firm. A report accepted under this subdivision is considered an official report of the
25 director; and
26 (4) Summon and examine, under oath, a key individual, employee of a licensee, or
27 authorized delegate and require the individual, employee, or delegate to produce
28 records regarding any matter related to the condition and business of the licensee
29 or authorized delegate.

30 A licensee or authorized delegate shall provide, and the director must have full and
31 complete access to, all records the director may reasonably require to conduct a complete
32 examination. The records must be provided at the location and in the format specified by
33 the director. The director may utilize multistate record production standards and
34 examination procedures when the standards will reasonably achieve the requirements of
35 this section.

1 Unless otherwise directed by the director, a licensee shall pay all costs reasonably
2 incurred in connection with an examination of the licensee or the licensee's authorized
3 delegates.

4 **Section 9. That § 51A-17-28 be AMENDED:**

5 **51A-17-28.** The director may request financial data from a licensee in addition to
6 that required under § 51A-17-19, or conduct an ~~on-site~~ examination of any authorized
7 delegate or location of a licensee within this state without prior notice to the authorized
8 delegate or licensee only if the director has a reasonable basis to believe that the licensee
9 or authorized delegate is in noncompliance with this chapter. If the director examines an
10 authorized delegate's operations, the authorized delegate shall pay all reasonably incurred
11 costs of such examination. If the director examines a licensee's location within the state,
12 the licensee shall pay all reasonably incurred costs of such examination.

13 **Section 10. That chapter 51A-17 be amended with a NEW SECTION:**

14 The director may participate in multistate supervisory processes established
15 between states and coordinated through the Conference of State Bank Supervisors, Money
16 Transmitter Regulators Association, and affiliates and successors thereof for all licensees
17 in this state and other states. As a participant in multistate supervision, the director may:
18 (1) Cooperate, coordinate, and share information with other states and federal
19 regulators pursuant to § 51A-17-30;
20 (2) Enter into written cooperation, coordination, or information-sharing contracts or
21 agreements with organizations comprised of state or federal governmental
22 agencies; and
23 (3) Cooperate, coordinate, and share information with organizations comprised of
24 state or federal governmental agencies, provided that the organizations agree in
25 writing to maintain the confidentiality and security of the shared information
26 pursuant to § 51A-17-30.

27 The director may not waive, and nothing in this section constitutes a waiver of, the
28 director's authority to conduct an examination, investigation, or otherwise take
29 independent action authorized by this chapter, rule adopted under this chapter, or order
30 issued under this chapter to enforce compliance with applicable state or federal law. A
31 joint examination or investigation, or acceptance of an examination or investigation
32 report, does not constitute a waiver of an examination assessment provided for in this
33 chapter.