



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Financial Institutions Division of TITLE-SERIES: 106-23  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 106-23 Rule Pertaining to Money Transmission Services

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 32A-2-7 and 31A-2-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Chapter 32A contains rulemaking authority for money transmission activities specifically, and Chapter 31A contains the commissioner's broad authority to promulgate rules. A new section 8b in article 2 of chapter 32A requires licensees to use permissible investments and the rule provides supplemental guidance on acceptable investments.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/3/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Posted on the website and sent emails to stakeholders and other interested parties.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule provides additional guidance for provisions of the money transmission law enacted during the 2022 Legislative Session, including additional definitions found in the rule itself as well as detailed guidance on permissible investments.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule provides additional detail on permissible investments for money transmission licensees, including specific detail on irrevocable letters of credit, cash and cash equivalents, and other investments. It also creates an implementation plan since these provisions are new to West Virginia.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Division anticipates no economic impact on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The Division anticipates no economic impact on special revenue accounts. There is a possibility that additional applicants may submit applications for licensure because of clarifying definitions in the 2022 legislation, but the impact would be negligible.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The Division anticipates no economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The rule is not expected to have any impact on revenues or expenses of the agency.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



TITLE 106  
LEGISLATIVE RULE  
COMMISSIONER OF FINANCIAL INSTITUTIONS

SERIES 23  
RULE PERTAINING TO MONEY TRANSMISSION SERVICES

**§106-23-1. General.**

1.1. Scope. -- This rule establishes provisions related to the regulation of money transmission services, implemented in West Virginia Code §§32A-2-1, et seq.; it applies to all entities licensed under that statute.

1.2. Authority. -- W.Va. Code §§32A-2-7 and 31A-2-4.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Sunset Provision. – This rule will terminate and have no further force or effect on August 1, 2028.

**§106-23-2. Definitions.**

2.1. General Rule. – Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided in W.Va. Code §§31A-1-2 and 32A-2-1, et seq.

2.2. Terms defined.

2.2.1. “Eligible rating” means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers such as “plus” or “minus” for S&P, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

2.2.2. “Eligible rating service” means any Nationally Recognized Statistical Rating Organization (NRSRO) as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the commissioner by rule or order.

**§106-23-3. Permissible Investments.**

3.1. Cash and cash equivalents. In addition to the permissible investments enumerated in §32A-2-8b(e)(1), cash and cash equivalents shall also include ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated “AAA” by S&P, or the equivalent from any eligible rating services.

3.2. Irrevocable Letters of Credit.

3.2.1. The irrevocable letter of credit authorized by §32A-2-8b(e)(4) must:

3.2.1.a. Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that (1) bears an eligible rating or whose parent company bears an eligible rating; and (2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

3.2.1.b. Be irrevocable, unconditional and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

3.2.1.c. Not contain reference to any other agreements, documents or entities, or otherwise provide for any security interest in the licensee; and

3.2.1.d. Contain an issue date and contain an expiration date, which expiration shall be December 31, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least 60 days prior to any expiration date, that the irrevocable letter of credit will not be extended.

3.2.2. In the event of any notice of expiration or non-extension of a letter of credit issued pursuant to section 3.2.1 of this rule and §32A-2-8b(e)(4), the licensee shall be required to demonstrate to the satisfaction of the commissioner, 15 days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with §32A-2-8b(a) upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with §32A-2-8b(a). Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

3.2.3. The letter of credit shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit to receive funds within seven days of presentment:

3.2.3.a. The original letter of credit, including any amendments;

3.2.3.b. A written statement from the beneficiary stating that any of the following events have occurred:

3.2.3.b.1. the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

3.2.3.b.2. the filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

3.2.3.b.3. the seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has

caused or is likely to cause the insolvency of the licensee;

3.2.3.b.4. the beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with §32A-2-8b(a) upon the expiration or non-extension of the letter of credit.

3.2.4. The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this section are assigned to the commissioner.

3.2.5. The commissioner is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including but not limited to services provided by the Nationwide Multistate Licensing System and State Regulatory Registry, LLC.

### 3.3. Additional Permissible Investments.

3.3.1. Unless permitted by the Commissioner by order to exceed the limit set forth herein, the following investments are permissible under W.Va. Code §32A-2-8b(a) to the extent specified:

3.3.1.a. Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to 50% of the aggregate value of the licensee's total permissible investments;

3.3.1.b. Of the receivables permissible under section 3.3.1.a, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed 10% of the aggregate value of the licensee's total permissible investments.

3.3.2. The following investments are permissible up to 20% per category and combined up to 50% of the aggregate value of the licensee's total permissible investments:

3.3.2.a. A short term (up to six months) investment bearing an eligible rating;

3.3.2.b. Commercial paper bearing an eligible rating;

3.3.2.c. A bill, note, bond, or debenture bearing an eligible rating;

3.3.2.d. U.S. tri-party repurchase agreements collateralized at 100% or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

3.3.2.e. Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P, or the equivalent from any other eligible rating service; and

3.3.2.f. A mutual fund or other investment fund composed solely and exclusively or one of more permissible investments listed in W. Va. Code §32A-2-8b(e)(1) to (3) and section 3.1 of this rule.

3.3.3. Cash (including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee’s customers) at foreign depository institutions are permissible up to 10% of the aggregate value of the licensee’s total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

3.3.3.a. has an eligible rating;

3.3.3.b. is registered under the Foreign Account Tax Compliance Act;

3.3.3.c. is not located in any country subject to sanctions from the Office of Foreign Asset Control; and

3.3.3.d. is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

3.4. Phased Implementation for Permissible Investments.

3.4.1. All licensees and applicants shall be expected to comply with §32A-2-8b(a) as of the effective date of such provision.

3.4.2. The Division of Financial Institutions will examine current licensees for compliance with these provisions upon their effective date at a scheduled examination and will note instances of non-compliance and direct licensees to make appropriate changes as necessary to achieve compliance.

3.4.3. Beginning January 1, 2024, any licensee not in full compliance with §32A-2-8b(a) may be subject to penalties for failure to comply as provided in the statute.