

Draft Model MSB Law Language by Topic

Activity Definitions		
Topics	Source	Draft Language
Money transmission	Adapted UMSA	<p>“Money transmission” means any of the following:</p> <ol style="list-style-type: none"> (1) Selling or issuing payment instruments. (2) Selling or issuing [prepaid access or stored value] (use the term your state uses). (3) Receiving money for transmission. <p>The term does not include the provision solely of online or telecommunications services or network access.</p> <p>“Receiving money for transmission” or “money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.</p>
Sale of payment instruments	Adapted UMSA	<p>“Payment instrument” means a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.</p>
Stored value/prepaid access	New	<p>[“Prepaid access” or “Stored value”] means monetary value representing a claim against the issuer stored on an electronic or digital medium, or device (for example a card), and evidenced by an electronic or digital record, intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services.</p>
Money / Monetary Value / Monetary Equivalent	UMSA	<p>“Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.</p> <p>“Monetary value” means a medium of exchange, whether or not redeemable in money.</p>
Currency Exchange (Optional)	New	<p>“Currency exchange” means advertising, soliciting, or accepting for a fee the currency or other negotiable instrument denominated in the currency of one government in exchange for the currency or other negotiable instrument denominated in the currency of another government.</p>
Virtual Currency (Optional)	ULC/CSBS	<p>Virtual currency means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. Virtual currency does not include the software or protocols governing the transfer of the digital representation of value.</p>

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Exemptions		
Topics	Source	Draft Language
FDIC insured General Purpose Reloadable Card	N/A	Exempted under agent of bank exemptions
Closed loop prepaid access	UMSA (Payment Instrument Exception)	[This sentence follows the definition of “prepaid access [or stored value]”.] The term “prepaid access [or stored value]” does not include any prepaid access [or stored value] that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.
Agent of payee/payment processors	FinCEN & State Adaptation	This chapter does not apply to: (1) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers; (2) an agent appointed by a payee to collect and process payment as the agent of the payee, provided the agent can demonstrate that: a) there exists a written agreement between the payee and the agent directing the agent to collect and process payments on the payee’s behalf; b) the payee holds the agent out to the public as accepting payments on the payee’s behalf; and c) payment is treated as received by the payee upon receipt by the agent so that there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee. [This exemption would not apply to virtual currency and/or marijuana industry processing activities. (This sentence could be added for those states that do not wish to exempt marijuana industry and/or virtual currency processing activities.)]
Agent of bank/service providers of banks	New	This act does not apply to: (1) An Insured Depository Financial Institution or agent of a Depository Financial Institution. “Insured Depository Financial Institution” means a bank, credit union, savings and loan association, savings association, or savings bank with insured deposits organized under the laws of the United States or any state of the United States.
Payroll services & 1099 contractors	TBD	TBD
Payment of business taxes	Not Exempt	Not Exempt
Business to business activities	Not Exempt	Not Exempt
VC – Affinity/Reward Program Exemption	New	This chapter does not apply to:

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(Optional)		1) virtual currency or other digital representation of value redeemable exclusively in goods or services limited to transactions involving a defined merchant, such as rewards programs.
VC – Online Gaming Exemption (Optional)	New	This chapter does not apply to: 1) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.
VC – Other DLT Uses Exemption (Optional)	New	This chapter does not apply to: 1) Other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

Control		
Topics	Source	Draft Language
<p>Defining a Control Person</p> <ul style="list-style-type: none"> • Passive or active ownership • Prescriptive (ownership %) v. descriptive (ex. Ability to influence) 	<p>UMSA Adaptation</p>	<p>(5) “Control” means:</p> <p>(A) ownership of, or the power to vote, directly or indirectly, at least 10 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;</p> <p>(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or</p> <p>(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.</p> <p>(D) For purposes of determining the percentage of a licensee controlled by any natural person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.</p> <p>For purposes of this [act], the term “control” does not apply to a person that:</p> <p>(1) is not employed by the licensee;</p> <p>(2) has no power to vote, directly or indirectly, any class of voting securities or voting interests of a licensee or person in control of a licensee; and</p> <p>(3) does not participate in decisions relating the day-to-day operations of the licensee.</p> <p>Any person claiming the exception described herein shall attest to the facts excepting the person from the definition of “control” on a form prescribed by the nationwide multistate licensing system and registry.</p> <p>* Attestation form for passive investors appended</p>
<p>Procedures for Control Persons</p> <ul style="list-style-type: none"> • Fingerprinting and CBC 	<p>New</p>	<p>Whenever this [act] requires a person to be approved by the [superintendent] to serve as an organizer, incorporator, director, executive officer, or control person of a licensee, that person shall furnish to the nationwide multistate licensing system and registry all of the following:</p>

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	<ul style="list-style-type: none"> • Credit check and financial fitness assessment • Treatment of foreign control persons 	<p>(A) The person’s fingerprints for submission to the federal bureau of investigation and the [superintendent] for purposes of a national and state criminal history background check;</p> <p>(B) If the person has resided outside the United States in the last 10 years, the person shall provide an investigative background report prepared by an independent search firm.</p> <p style="padding-left: 40px;">(1) At minimum, the search firm shall:</p> <p style="padding-left: 80px;">(a) Demonstrate that it has sufficient resources and is properly licensed to conduct the research of the background report; and</p> <p style="padding-left: 80px;">(b) Not be affiliated with or have an interest with any individuals it is researching.</p> <p style="padding-left: 40px;">(2) At minimum, the investigative background report shall be written in the English language and shall contain the following:</p> <p style="padding-left: 80px;">(a) A comprehensive credit report, including a search of the court data in the countries, states, and towns where the person resided and worked in the contiguous areas;</p> <p style="padding-left: 80px;">(b) Criminal records information for the past ten years, including felonies, misdemeanors and violations, including a search of the court data in the countries, states, and towns where the individual resided and worked in the contiguous areas;</p> <p style="padding-left: 80px;">(c) Employment history;</p> <p style="padding-left: 80px;">(d) Media history, including an electronic search of national and local publications, wire services and business applications; and</p> <p style="padding-left: 80px;">(e) Regulatory history, including but not limited to securities, insurance, and mortgage-related industries.</p> <p>(C) Personal history and experience in a form prescribed by the nationwide multistate licensing system and registry, along with authorization for the superintendent and the nationwide mortgage licensing system and registry to obtain both of the following:</p> <p style="padding-left: 40px;">1. An independent credit report from a consumer reporting agency; and</p> <p style="padding-left: 40px;">2. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.</p>
<p>Control Events</p>	<ul style="list-style-type: none"> • Control event • Change of control procedures • Control event exceptions 	<p>Change of Control</p> <p>(A) A licensee shall:</p> <p style="padding-left: 40px;">(1) Submit an application in a form prescribed by the [superintendent] requesting approval of the acquisition; and</p> <p style="padding-left: 40px;">(2) Submit a nonrefundable fee of [\$2,000] with the request for approval.</p> <p>(B) The application required by subsection (A) shall include information regarding the proposed control persons that would have been required by the licensee or control persons as part of the original license or renewal application.</p> <p>(C) The [superintendent] shall approve an application for change of control under subsection (A) if, after investigation, the [superintendent] determines that the person or group of persons requesting approval has met the requirements of subsections (A) and (B) and has the competence, experience, character, and general</p>

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			<p>fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.</p> <p>(D) When an application for a change of control under this [article] is complete, the [superintendent] shall notify the licensee of the date on which the application was determined to be complete and:</p> <ul style="list-style-type: none">(1) The [superintendent] shall approve or deny the application within [120] days after the date on which the application was determined to be complete; or(2) If the application is not approved or denied within [120] days after the date on which the application was determined to be complete:<ul style="list-style-type: none">(a) The application is deemed approved; and(b) The [superintendent] shall permit the change of control under this section, to take effect as of the first business day after expiration of the [120] day period. <p>(E) The requirements of subsection (A) do not apply to any of the following persons, but these persons shall notify the [superintendent] within [15] days after the change of control:</p> <ul style="list-style-type: none">(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting interests of a licensee or a person in control of a licensee;(2) A person that acquires control of a licensee by devise or descent;(3) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;(4) A person that the [superintendent] determines is not subject to subsection (A) based on the public interest. <p>(F) Subsection (A) does not apply to a public offering of securities.</p> <p>(G) Before filing an application for approval to acquire control of a licensee or person in control of a licensee, a person may request in writing a determination from the [superintendent] as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the [superintendent] determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections (A) through (C).</p>
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Financial Condition																								
Topics	Source	Draft Language																						
<p>Net Worth</p> <ul style="list-style-type: none"> • Tangible? • Consistent 	<p>New</p>	<p>(a) A licensee under this [article] shall maintain at all times a tangible net worth of the greater of \$100,000 or three percent of total assets</p> <p>(b) Net worth must be proven at initial application and annually with current audited financial statements prepared in accordance with generally accepted accounting principles.</p> <p>(c) The [superintendent] may increase the amount of tangible net worth required if the [superintendent] determines that a higher net worth is necessary based on criteria specified in rule.</p>																						
<p>Surety Bonding</p> <ul style="list-style-type: none"> • Risk Based • Consistent 	<p>New</p>	<p>(a) Except as otherwise provided in subsection (b), a surety bond or other similar security acceptable to the [superintendent] in the amount of \$100,000 must accompany an application for a license.</p> <p>(b) The licensee shall maintain or increase the amount of security to reflect the dollar amount of all licensed money transmission activity in this state in the preceding calendar year according to the table in this paragraph. A licensee may decrease its security according to the table in this paragraph if the security required is less than the amount of security on file with the [superintendent].</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Dollar Amount of Money Transmission Activity</th> <th style="text-align: left;">Security Required</th> </tr> </thead> <tbody> <tr> <td>\$0 to \$5,000,000</td> <td>\$100,000</td> </tr> <tr> <td>\$5,000,000.01 to \$10,000,000</td> <td>\$200,000</td> </tr> <tr> <td>\$10,000,000.01 to \$15,000,000</td> <td>\$300,000</td> </tr> <tr> <td>\$15,000,000.01 to \$20,000,000</td> <td>\$400,000</td> </tr> <tr> <td>\$20,000,000.01 to \$25,000,000</td> <td>\$500,000</td> </tr> <tr> <td>\$25,000,000.01 to \$30,000,000</td> <td>\$600,000</td> </tr> <tr> <td>\$30,000,000.01 to \$35,000,000</td> <td>\$700,000</td> </tr> <tr> <td>\$35,000,000.01 to \$40,000,000</td> <td>\$800,000</td> </tr> <tr> <td>\$40,000,000.01 to \$45,000,000</td> <td>\$900,000</td> </tr> <tr> <td>Over \$45,000,000</td> <td>\$1,000,000</td> </tr> </tbody> </table> <p>(c) Security must be in a form satisfactory to the [superintendent] and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.</p> <p>(d) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the [superintendent] may maintain an action on behalf of the claimant.</p> <p>(e) A surety bond must cover claims for so long as the [superintendent] specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the [superintendent] may permit</p>	Dollar Amount of Money Transmission Activity	Security Required	\$0 to \$5,000,000	\$100,000	\$5,000,000.01 to \$10,000,000	\$200,000	\$10,000,000.01 to \$15,000,000	\$300,000	\$15,000,000.01 to \$20,000,000	\$400,000	\$20,000,000.01 to \$25,000,000	\$500,000	\$25,000,000.01 to \$30,000,000	\$600,000	\$30,000,000.01 to \$35,000,000	\$700,000	\$35,000,000.01 to \$40,000,000	\$800,000	\$40,000,000.01 to \$45,000,000	\$900,000	Over \$45,000,000	\$1,000,000
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			<p>the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or prepaid access [or stored value] obligations outstanding in this State is reduced. The [superintendent] may permit a licensee to substitute another form of security acceptable to the [superintendent] for the security effective at the time the licensee ceases to provide money services in this State.</p> <p>(f) The [superintendent] may increase the amount of security required to a maximum of \$7,000,000.</p>
Permissible Investments	<ul style="list-style-type: none"> • Consistent timing • Consistent treatment of permissible assets • Risk Based 	New	<p>Maintenance of Permissible Investments</p> <p>(1)[(a)] A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and prepaid access [or stored value] obligations issued or sold in all states and money transmitted from all states by the licensee.</p> <p>[Virtual Currency Module – insert if regulating virtual currency (also insert (a) after 1 above):</p> <p>(b) A licensee transmitting virtual currencies must hold like-kind virtual currencies of the same volume as that held by the licensee but which is obligated to consumers in lieu of the permissible investments required in (a) of this subsection.</p> <p>(c) A licensee conducting activities in both subsection (a) and (b) must maintain applicable levels and types of permissible investments as described in those subsections.]</p> <p>(2) The [superintendent], with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The [superintendent] by rule may prescribe or by order allow other types of investments</p> <p>(3) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee’s outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee.</p>
ALTERNATIVE: Suspension Bridge	<ul style="list-style-type: none"> • Bonding & net worth insufficient to cover losses of largest companies • Permissible Investments do not account for financial condition 	New	<p>Concepts:</p> <ol style="list-style-type: none"> 1) Apply EU PSD2 Funds Safeguarding language to all licensees to explicitly prohibit using customer funds for a licensee’s own purposes 2) Tier the types of assets that can serve as permissible investments based on risk and condition their use based on a financial condition ratio. For example, if a company has a low Tangible Assets to Total Liabilities ratio, it can only hold the most conservative assets for permissible investments, e.g. bank deposits. If a company has a high Tangible Assets to Total Liabilities ratio, it can hold riskier assets, subject to haircuts used by banks. 3) Eliminate blanket bond requirements and replace with a bond amount to cover receivership. 4) Create bonding alternative – no permissible investments required if all customer funds are insured. Companies will still be prohibited from inappropriately using customer funds by the funds safeguard requirement.

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Coordination		
Topics	Source	Draft Language
<p align="center">Multistate Supervision</p> <ul style="list-style-type: none"> • Coordination • Resources 	<p>Existing State Law</p>	<p>IMPLEMENTATION. In order to carry out the purposes of this [act], the [Superintendent] may:</p> <p>(1) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and records and related information obtained under this section;</p> <p>(2) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this Article;</p> <p>(3) Accept and rely on examination or investigation reports made by other government officials, within or without this State;</p> <p>(4) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for any person subject to this Article and may incorporate the audit report in the report of examination or investigation.</p>
<p align="center">Interstate Parity</p> <ul style="list-style-type: none"> • Consistency 	<p>Existing State Banking Law</p>	<p>(5) In order to support uniformity between states, notwithstanding any other provision of law, if the commissioner finds that any provision of other state money services laws, regulations, guidance, interpretations, orders, processes, or policies applicable to licensees is substantively different from the provisions of this code, or would more clearly establish requirements within the commissioner’s discretion, the commissioner may by regulation, guidance, interpretation, order, process, or policy make such a provision of another state’s money services law, regulation, guidance, interpretation, order, process, or policy applicable to licensees.</p> <p>(6) In order to support uniformity between states, notwithstanding any other provision of law, if the superintendent finds that any model regulations, guidance, interpretations, orders, processes, or policies established by the Conference of State Bank Supervisors, Money Transmitter Regulators Association, State Regulatory Registry, LLC, other association of state regulators, an instrumentality of the states established to promote consistency, or any other state or federal regulatory instrumentality, would clarify regulatory requirements, expectations, or drive consistency between states, the commissioner may by regulation, guidance, interpretation, order, process, or policy make such model regulations, guidance, interpretations, orders, processes, or policies applicable to licensees.</p> <p>(7) In order to support uniformity between states, notwithstanding any other provision of law, in the event subsections (5) and (6) of this section provide the [superintendent] insufficient legal authority to adopt requirements mandated by or predicated on federal law, the commissioner has authority to adopt by regulation, guidance, interpretation, or order any requirement, standard, process, or other legal requisite needed to prevent federal preemption of money services in this state.</p> <p>(8) Review of actions taken pursuant to subsections (5), (6), or (7) of this section shall be limited to whether the final determination made was arbitrary or capricious.</p> <p>[Reserve for state-specific administrative publication and effective date requirements.]</p>

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Appendix

Passive Investor Attestation Form

For individuals:

I, [Name], on this date, [Date], swear (or affirm) that I executed this document on my own behalf, that I am attesting to and submitting this document for purposes of being declared a passive investor of [Licensee] and that I agree to and represent the following:

- (1) I do not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee or person in control of the licensee.
- (2) I do not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee or person in control of the licensee;
- (3) I am not employed by and do not have any managerial duties of the licensee or person in control of a licensee; and
- (4) I do not, in any way, participate in the day-to-day decisions or operations of the licensee.

I verify that I am the named person above and agree to the language as stated.

For entities:

I, [Name], on this date, [Date], swear (or affirm) that I am an authorized representative of [Entity/Fund], that I am able to execute this document on [Entity's] behalf, that I am attesting to and submitting this document for purposes of [Entity] being declared a passive investor of [Licensee] and that I agree to and represent the following:

- (1) [Entity] does not own or have the power to vote, directly or indirectly, 10 percent or more of a class of voting securities or voting interests of the licensee or person in control of the licensee.
- (2) [Entity] does not have the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial control of the licensee or person in control of the licensee;
- (3) [Entity] is not employed by and does not have any managerial duties of the licensee or person in control of a licensee; and
- (4) [Entity] does not, in any way, participate in the day-to-day decisions or operations of the licensee.

I verify that I am the named person above and agree to the language as stated.