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US States Adopt Model Money Transmission Act, but Harmonization Remains Elusive

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So far in 2024, nine states[1] – Maryland, South Dakota, Wisconsin, Kansas, Maine, Vermont, South Carolina, Missouri and Connecticut – have passed legislation or enacted regulations based, to varying degrees, on the **Model Money Transmission Modernization Act (Model Act)**. The Model Act was developed by the Conference of State Bank Supervisors (CSBS), with input from a working group constituted of industry participants and regulators. These states join California **and 13 other states that had already enacted substantive changes to their money transmission laws** since the Model Act was finalized by CSBS in 2021.

Overview of money transmission laws and Model Act adoption to date

Currently, every US state other than Montana regulates money transmission under a state-specific licensing regime. (The District of Columbia and US territories, including Puerto Rico, Guam and the US Virgin Islands, also have money transmission licensing laws.) These laws generally require persons engaging in receiving money for transmission or otherwise facilitating payments on behalf of others to be licensed in each jurisdiction where they have customers. Covered business models and activities can include marketplace platforms, payment processors and payment facilitators, domestic and cross-border person-to-person and business-to-business payments solutions, payroll services providers, wallets and stored value products, bill payment services, and activities involving exchanging, transferring, or custodying virtual currency and digital assets.

The Model Act is intended to standardize and harmonize the regulation of companies subject to state money transmission laws. So far, even though about half of the states have enacted legislation based on the Model Act, progress toward harmonization has been uneven. Some states have come very close to full adoption of the Model Act, while other states have selected only certain provisions from the Model Act to incorporate into their existing money transmission statute (or, in the case of Maryland, through regulations only). In both scenarios, however, states have added new or different provisions outside the scope of the Model Act, or otherwise retained bespoke provisions. States also have diverged in their interpretation of some Model Act provisions in their new or updated money transmission laws.

Furthermore, some elements of the Model Act have been broadly enacted by states regardless of whether the state has done a near-full adoption or piecemeal implementation (e.g., the exemption for an “agent of a payee” or updated categories of permissible investments), but even in these cases, some states have deviated. For other elements of the Model Act, such as the treatment of payroll processing services or virtual currency activity under the money transmission law, Model Act adoption appears to have created an even more fractured regulatory landscape.

As a result, three years into the Model Act era, managing compliance with money transmission laws generally remains a state-by-state proposition for money transmitters, including financial technology companies and other payment innovators. The remainder of this alert discusses key highlights of the recent state Model Act implementations, as well as related developments in the regulation of virtual currency activities under state money transmission laws. Please note that this alert is intended only to highlight some recent key trends and development, and **it is not** a comprehensive overview of all legislation and regulation potentially applicable to money transmitters, virtual currency platforms, and other payments services providers.

Six states adopt substantially all of the Model Act in 2024, with some changes and additions

South Carolina (effective June 6, 2024) amended its existing money transmission law to conform closely to the Model Act, while South Dakota (effective July 1, 2024), Missouri (effective August 28, 2024), and Wisconsin and Kansas (both effective January 1, 2025) repealed and replaced their respective existing money transmission laws with new statutes that track the Model Act with limited exceptions. For example, Kansas' new statute requires a licensee to submit a renewal application more than 30 days before license expiration, while the Model Act, and other states' enactment of it, only requires the licensee to pay an annual renewal fee no more than 60 days before license expiration on December 31. Additionally, while the Model Act establishes a specific formula for calculating the required surety bond amount for a licensee, Maine instead has established a fixed surety bond amount. Furthermore, the Model Act imposes prescriptive receipting requirements on consumer money transmission services (to the extent the transactions are not already subject to the federal Remittance Transfer Rule). But these requirements don't apply to money received for transmission for commercial purposes. However, Maine's new law does not exclude non-consumer money transmission services from the new receipting requirements.

Like Maryland (see below), Maine also adds new compliance-related provisions beyond the Model Act that expressly prohibit practices in connection with money transmission activity, such as defrauding or misleading any person and engaging in unfair deceptive or abusive acts or practices, including any false or deceptive statement about fees or other terms of money transmission or currency exchange transactions.

In embracing the Model Act, Wisconsin effectively reverses its historical position that persons without a physical presence in the state were not required to be licensed in order to provide money transmission (or virtual currency) services to Wisconsin residents. The Model Act specifically defines money transmission activity to encompass providing covered services to persons located in the state, regardless of the presence of the provider itself. Because Wisconsin adopted this Model Act framework, companies that provide money transmission services to persons located in Wisconsin must be licensed when the law takes effect on January 1, 2025. The Wisconsin Department of Financial Institutions **states on its website** that it "encourages companies requiring a license to apply now […] under the current law with the understanding that they must comply with the new law by January 1, 2025."

South Dakota enacted legislation last year that partially adopted the Model Act and replaced it this year with a new statute adopting the Model Act almost entirely. One potentially noteworthy deviation from the Model Act template is that South Dakota's law requires a licensee providing virtual currency services to "hold like-kind virtual currencies of the same volume as that held by the licensee but that is obligated to consumers" instead of holding required permissible investments against such outstanding obligations. The law does not otherwise address the regulation of virtual currency activities.

The Model Act expressly defines money transmission to include payroll processing services, but each of these six states, except Missouri, expressly excludes payroll processing companies from money transmission regulation. For example, Kansas and South Dakota each exempt a person appointed as an "agent of a payor" for purposes of providing payroll processing services for which such agent would otherwise need to be licensed, subject to specific criteria being met.

The Model Act includes an exemption for an **"agent of a payee,"** provided that certain criteria are met. Consistent with the general trend of state banking departments acknowledging this exemption, all six of the states discussed above included this exemption without material deviation. While there has been reasonable consistency on this point, see below for a discussion of one state's unique approach.

Three states partially adopt the Model Act and create new inconsistencies

To date in 2024, three states have enacted new laws only partially based on the Model Act: Vermont, Connecticut and Maryland (through regulation). In each case, large swaths of the state's existing law, which does not conform in substance and in specifics to

the Model Act, remained in place. Below, we briefly discuss each state's approach in turn.

Connecticut

Connecticut (effective October 1, 2024) largely left in place existing non-Model Act definitions of regulated money transmission activity, including a unique definition of activity requiring licensing in the state, and it did not incorporate the Model Act exemptions (though it has previously published a **no-action position** for persons acting as an agent of a payee). Connecticut also retained its existing record-keeping and reporting requirements, and a unique timing requirement relating to money transfers; adopting the Model Act in Connecticut would have established a uniform approach each of these aspects of money transmission regulation. Finally, the law also updates the list of licensees' permissible investments, adopting some, but not all, of the Model Act's permissible investments, and retaining a few unique Connecticut ones, such as gold.[2]

Vermont

Vermont's new law (effective July 1, 2024) does incorporate substantial portions of the Model Act in full or nearly in full, including definitions of regulated activity, key exemptions, requirements for change of control, receipting, and permissible investments. However, it adopts a broader definition of individuals who may be deemed in control of a licensee and subject to background checks and related vetting, and it provides that licensees failing to pay their renewal fee by December 1 will not be able to renew their license at the end of the year. Additionally, Vermont law does not incorporate a key Model Act provision that exempts from the change of control approval process an internal reorganization of a licensee that does not change its ultimate ownership. Almost all states, even those that have only done partial Model Act adoptions to date, have included this provision. Furthermore, while Model Act states generally require licensees to provide updates regarding their authorized delegates through a quarterly uniform report, the new Vermont law requires 30-day advance notice of any changes to authorized delegate locations and imposes a $25 fee for each new or different location. Vermont's law also adds new requirements relating to virtual currency activities (discussed below).

Maryland

Maryland regulations add some Model Act provisions, but the underlying statute does not conform to the Model Act, and the regulations do not close the gap entirely. For example, some definitions of regulated activity and carve outs from that activity (such as for closed-loop stored value) are inconsistent with the Model Act definition and therefore inconsistent with other state definitions. Additionally, while the regulations affirm an exemption for an agent of a payee, they add bespoke criteria such as that "[p]ayment by the agent to the payee occurs promptly and is not conditioned on the occurrence of any future event or performance by any party to the transaction."[3] Like Maine, Maryland has added the Model Act's prescriptive receipting requirement, but has not excluded non-consumer purposes transactions. Also similar to Maine, the Maryland regulations have added new corporate governance provisions that generally are not part of money transmission laws in other jurisdictions.

States continue to take disparate approaches to regulation of virtual currency

The Model Act contains an optional article specifically pertaining to the regulation of virtual currency. It imposes licensing, disclosure, and receipting requirements on those engaged in virtual currency business activity and makes additions to the definitions. Unlike the other provisions of the Model Act, the virtual currency article was not the product of consensus among participants in the CSBS working group. In turn, the virtual currency provisions of the Model Act have not been widely embraced; of the states enacting Model Act legislation since its 2021 publication by CSBS, only Maine, Minnesota and North Dakota have included this additional regulatory framework.

Nevertheless, the vast majority of state banking departments have addressed the regulation of virtual currency in some fashion –

whether through legislation, regulation, opinion letter, guidance or some combination thereof. The following is a noncomprehensive overview of some key developments in the regulation of virtual currencies under state money transmission laws in 2024.

Money transmission licensing for virtual currency activity

In January 2024, the Hawaii Department of Commerce and Consumer Affairs' Division of Financial Institutions and the Hawaii Technology Development Corporation jointly issued an **announcement that appears to indicate that digital currency companies are not required to hold money transmitter licenses** under Hawaii's money transmission law. Hawaii historically has been a uniquely challenging state for money transmission companies seeking to engage in virtual currency activities because it does not permit such companies to use virtual currency holdings as permissible investments to cover outstanding virtual currency obligations, effectively requiring licensees to hold duplicate capital.

Pennsylvania moved in the opposite direction from Hawaii, reversing its prior view that virtual currency activity was **not** subject to money transmission licensing. In April 2024, the **Pennsylvania Department of Banking and Securities (DOBS) published a statement of policy** clarifying that it considers virtual currency to be "money" under the money transmission law, calling it a "generally recognized" medium of exchange. The new policy interpretation brings virtual currency businesses in Pennsylvania under the umbrella of licensed money transmitters – and indicates that DOBS expects companies engaged in covered virtual currency activity to be licensed and registered by the time the statement takes effect on October 15, 2024.

New disclosure requirements for virtual currency activities

Texas, which enacted legislation based on the Model Act last year, addressed the regulation of virtual currencies to some degree by defining "stablecoins" as a type of "money," therefore requiring persons engaging in covered stablecoin activities to be licensed. A different Texas law, House Bill 1666, imposes additional requirements on digital asset service providers – or electronic platforms that facilitate the trading of digital assets on behalf of a digital asset customer and maintain custody of the customer's digital assets – that are licensed as money transmitters. These companies generally must file annual reports with the Texas Department of Banking and are subject to other restrictions, including a prohibition on commingling customer funds and maintaining customer funds in such a manner that such customer may be unable to fully withdraw the funds.

Virtual currency kiosk regulations

California, Vermont, Connecticut and Minnesota recently changed their laws to regulate virtual currency kiosk activities.

Under **California's 2023 Digital Financial Assets Law**, which became effective January 1, 2024, digital financial asset transaction kiosks in California are prohibited from accepting or dispensing more than $1,000 in a day from or to a customer and from charging a transaction fee greater than $5 or 15% of the US dollar equivalent of the digital financial assets involved in the transaction. Kiosks must provide comprehensive written disclosure containing the terms and conditions of the transaction.

In Vermont, new legislation also imposes a cap on virtual currency kiosk cash transactions at $1,000 per customer per day and limits fees per transaction to the greater of $5 or 3% of the USD equivalent of virtual currency involved. The law prohibits new kiosks from beginning operations in the state until July 2025, but kiosks already operating on or before July 30, 2024, are exempt from this moratorium.

Similarly, Connecticut and Minnesota have enacted legislation imposing transaction limitations and other obligations on kiosk issuers. These laws also shift liability for fraudulently induced transactions in some instances from the customer to the kiosk operator.

Considerations for companies providing payments and virtual currency services

States have made considerable progress in enacting legislation based on the Model Act and some have helped provide additional clarity to the industry, such as with broader adoption of the agent of a payee exemption. Nevertheless, there are still significant differences in state money transmission regulation and, in some cases, these differences have become more pronounced through Model Act adoptions (e.g., regulation of payroll processing, receipting requirements, virtual currency licensing and related compliance obligations). As a result, navigating the payments regulatory landscape seems to be as challenging as ever. Companies seeking to engage in the provision of payments services, or that are already operating as regulated financial institutions, should take into consideration that they likely will need to monitor ongoing developments and build a compliance program strategy that takes into consideration state-by-state regulation – and, depending on their size and maturity, such companies may struggle to manage these overlapping, disparate regulatory regimes.

Cooley analyst Shane Zerr also contributed to this alert.

Notes

1. As this alert was being prepared for publication, Illinois Gov. JB Pritzker signed into law Senate Bill 3412 as Public Act 103-0991, making Illinois the 10th state to pass legislation based on the Model Act this year.
2. One of the foundational elements of customer protection under the state money transmission licensing regimes is the requirement that a licensee must maintain permissible investments that equal or exceed – at all times – the licensee's outstanding money transmission obligations (effectively, the amount of money received from customers for transmission but not yet paid to a designated beneficiary or otherwise redeemed).
3. Md. Code Regs. 09.03.14.03(2)(g)

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