

DRAFT

FOR DISCUSSION ONLY

UNIFORM NONDEPOSITORY PROVIDERS OF FINANCIAL SERVICES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

FEBRUARY, 1998

UNIFORM NONDEPOSITORY PROVIDERS OF FINANCIAL SERVICES ACT

With Comments

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DRAFT NONDEPOSITORY PROVIDERS OF

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Source: Model Act Regulating Money Transmitters Section 3.

Reporter's Note: It is important to clearly define the outlets through which money service businesses conduct their business. This definition will help to define the legal relationship between money service businesses and those outlets. The money Transmitters Regulators= Association Model Legislation Outline ("Model Legislation Outline") uses the term "authorized agent" as an alternative to authorized delegate. The Financial Crimes Enforcement Network ("FinCEN") in its recent proposed rulemaking concerning money service businesses uses the term "agent" for those same entities. Finally, the Non-Bank Funds Transmitter s Group has suggested another alternative, "money transmitter outlet" to refer to independently-owned sales outlets. The definition of money transmitter outlet defines the entity as "a person, whether or not licensed or required to be licensed, who is engaged in the business of transferring funds through a money transmitter even if incidental to another business."

SUBPARAGRAPH (2) ALTERNATIVE 2

(2) "Agent" means any person whom the licensee appoints as its agent with authority to conduct money service business activities on behalf of the licensee.

Source: Modification of definition contained in Section 33043 of the California Financial Code.

Reporter's Note: Rather than use the term delegate the committee may consider using the term "agent" to signify the relationship between a licensee and outlets that conduct business on behalf of the licensee.

(3) "Check Casher" means a person who, for compensation sells currency in exchange for payment instruments received. The term "check casher" does not include a person who cashes checks in an amount less than or equal to [one thousand dollar (\$1,000)] for any person on a single day.

Source: Florida Money Transmitter's Code Section 560.102 with modifications

Reporter's Note: The \$1,000 per day threshold is an attempt to exempt small businesses such as grocery stores and businesses where check cashing is a service offered to customer incidental to another business (e.g., hotels) from having to obtain a license. FinCEN, in its proposed amendments to the Bank Secrecy Act used a \$500 per day threshold. The majority of responses advocated a higher dollar limit of 1,000 or more. An alternative definition that is used in some of the state states excludes "persons engaged in check cashing [or currency exchanging] which is incidental to the retail sale of goods and services, whose compensation for cashing checks [or exchanging currency] does not exceed 5 percent of the total gross income from the retail sale of goods or services. . . ."

(4) "Check Cashing" means exchanging for compensation a payment instrument for money delivered to the presenter at the time and place of the presentation.

Source: Arizona Money Transmitter Act Section 6-1201 with modifications.

Reporter's Note: It is important to have a definition for each of the services that have been grouped under the general heading of nondepository providers of financial services.

(5) "Check Issuer" means a person who engages in the business of issuing payment instruments who is responsible for payment on these instruments other than a person who issues these payment instruments in an amount less than \$1,000 in currency or monetary or other negotiable instrument to any person on any day.

Source: FinCEN proposed amendments to the Bank Secrecy Act Regulations -- Definition and Registration of Money Service Businesses amending 31 C.F.R. Part 103 with modifications.

(6) "Check Seller" means any person who engages in the business of selling payment instruments issued by another person, even if incidental to another business.

Source: FinCEN Proposed Amendments to the Bank Secrecy Act Regulations B Definition and Registration of money Service Businesses amending 31 C.F.R. Part 103 with proposed modifications of Non-Bank Funds Transmitters Group.

Reporter's Note: An alternative term is "Payment Instrument Seller".

(7) "Closed-End Stored Value Product" means a stored value product where the issuer is also the payee and the product is issued to pay for a series of goods and services that are provided by the issuer.

Source: New

Reporter's Note: This definition is derived from A Commercial Lawyer's Take on the Electronic Purse: An Analysis of Commercial Law Issues Associated with Stored Value Cards and Electronic Money prepared by the American Bar Association's Uniform Commercial Code Committee, Subcommittee on Payments, the Banking Law Committee, Subcommittee on Domestic and International Payments and EFT and the Committee on Law of Commerce in Cyberspace (1996). Many of the comments received by FinCEN with respect to registration requirements for stored value issuers discussed the distinction between closed-end systems such as phone cards and metro cards and open systems that can be used by consumers for a wide variety of transactions. The definitions provided in the proposed act are an attempt to distinguish between closed and open systems for purposes of licensing and regulation. Other exceptions that may need to be included in the definition of stored value include (i) a small dollar exception for issuers and (ii) an exception for merchants or others that honor stored value instruments.

(8) "Control" means ownership of, or the power to vote, twenty-five percent or more of the outstanding voting securities of a licensee or controlling person. The interests of any other person controlled by that person are aggregated with that person's interest for the purposes of determining the percentage of a licensee controlled by any person.

Source: Model Act Regulating Money Transmitters Section 3.

(9) "Controlling Person" means any person directly or indirectly in control of a licensee.

Source: Arizona Money Transmitter Act Section 6-1201; Model Act Regulating Money Transmitters Section 3 (modified to include the word "indirectly").

(10) "Currency" means the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in a foreign country.

Source: Florida Money Transmitters Code Section 560.102.

PARAGRAPH 11, ALTERNATIVE 1

(11) "Currency Dealer or Exchanger" means a person who exchanges for compensation, money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.

1 **Source:** Arizona Money Transmitter Act Section 6-1201.

2 PARAGRAPH 11, ALTERNATIVE 2

3 Alternative (11) "Foreign Currency Exchanger" means a person who exchanges, for compensation, currency
4 of the United States or a foreign government to currency of another government.

5 **Source:** Florida Money Transmitters Code Section 560.102.

6 (12) "Executive Officer" means the licensee's president, chairman of the executive committee,
7 senior officer responsible for the licensee's business, chief financial officers and any other person who
8 performs similar functions.

9 **Source:** Model Act Regulating Money Transmitters, Section 3

10 (13) "Funds Transmitter" means a person who engages in receipt of money for the purpose of
11 transmission by any means including transmissions within this country or to or from locations outside this
12 country by wire, facsimile, electronic transfer, courier, or otherwise.

13 **Source:** Florida Money Transmitters' Code Section 561.102.

14 **Reporter's Note:** The alternative term is "money transmitter" which is defined below.

15 (14) "Key Shareholder" means any person (or group or persons acting in concert) who is the
16 owners of [twenty-five (25)] percent or more of any voting class of an applicants stock.

17 **Source:** Model Act Regulating Money Transmitters Section 3.

18 (15) "Licensee" means a person licensed under this article

19 **Source:** Model Act Regulating Money Transmitters Section 3.

20 (16) "Location" means a place of business at which activity regulated by this [Act] occurs.

21 **Source:** Model Act Regulating Money Transmitters Section 3.

22 (17) "Material Litigation" means any litigation that, according to generally accepted
23 accounting principles, is considered significant to an applicant's or licensee's financial health, and is
24 referenced in that entity's annual audited financial statements, reports to shareholders, or similar documents.

25 **Source:** Model Act Regulating Money Transmitters Section 3.

26 (18) "Money" means a medium of exchange that is that is authorized or adopted by a domestic
27 or foreign government [and includes a monetary unit of account established by an intergovernmental
28 organization or by agreement between two or more nations].

29 **Source:** Uniform Commercial Code Section 1-201(24).

30 PARAGRAPH (19) ALTERNATIVE 1

31 (19) "Money Service Business" means a person who is located or doing business within this

1 state, as an organized business concern, in one or more of the capacities listed as follows:

- 2 (A) currency dealer or exchanger.
- 3 (B) check issuer,
- 4 (C) check seller.
- 5 (D) money transmitter.
- 6 (E) stored value provider.

7 **Source:** FinCEN Proposed Amendments to Bank Secrecy Act Regulations B Definition and Registration of
8 money Service Businesses (with modifications) amending 31 C.F.R, Part 103.

9 **Reporter's Note:** FinCEN defines each of the money service businesses within the definition itself. This
10 draft includes general definitions of each money serviced business as well as a global definition. FinCEN
11 also uses the terms "issuer of traveler checks, money orders or stored value rather than check issuer" and
12 "seller or redeemer of traveler's checks, money orders, or stored value." This draft uses the term check
13 seller and check issuer to more closely mirror existing state legislation. Stored value providers have also
14 been defined separately because stored value products are regulated differently under this proposed act.

15 PARAGRAPH (19) ALTERNATIVE 2

16 (19) "Money Service Business" means a person who is located or doing business in this state,
17 including a check casher, check seller, money transmitter, and stored value provider who does any of the
18 following:

- 19 (A) sells or issues payment instruments.
- 20 (B) engages in the business of receiving money for the transmission of or
21 transmitting money.
- 22 (C) engages in the business of exchanging payment instruments or money into any
23 form of money or payment instrument;
- 24 (D) engages in the business of receiving money for obligors for the purpose of
25 paying the obligor's bills, invoices or accounts;
- 26 (E) meets the definition of a bank, financial agency or financial institution as set
27 forth in 31 United States Code ' 5312 or 31 Code of Federal Regulations '103.11.

28 **Source:** Model Money Transmitter Licensing and Regulation Act Section

29 **Reporter's Note:** The Model Money Transmitter Licensing and Regulating Act groups all money service
30 businesses (except stored value issuers or sellers) together as "money transmitters". The current definition
31 simply substitutes the term "money transmitter" with "money service business".

32 PARAGRAPH (20) ALTERNATIVE 1

33 (20) "Money Transmitter" means a person who engages in the transmission of money by any
34 means including transmissions within this country or to or from locations abroad by payment instrument,
35 wire, facsimile, electronic transfer, or courier. "Money Transmitter" does not include a clearing house or
36 other association of banks that effects transfers of funds between or among banks through check clearing,
37 wire transfer, automated clearinghouse or similar services.

Source: Model Act Regulating Money Transmitters Section 3 with modifications proposed by New York Clearinghouse in letter dated October 2, 1997 to FinCEN concerning FinCEN's proposed amendments to the Bank Secrecy Act. The exclusion language proposed by the New York Clearinghouse is based in part on the New York Uniform Commercial Code Section 4A-105(1)(E) and the New York Superintendent of Banks regulations on money Transmitters, N.Y. Comp. Codes. R. & Regs. Tit. 3. Section 406.2(K)(7).

PARAGRAPH (20) ALTERNATIVE 2

(20) "Money Transmitter" means a person who accepts currency or funds, either directly or through an authorized delegate and transmits the currency or funds, or the value of currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank, or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

Source: FinCEN proposed amendments to the Bank Secrecy Act Regulations -- Definition and Registration of Money Service Businesses amending 31 C.F.R. Part 103.

(22) "Outstanding Payment Instrument" means any payment instrument issued by the licensee that has been sold in the United States directly by the licensee or any payment instrument issued by the licensee that has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

Source: Model Act Regulating Money Transmitters Section 3.

(23) "Payment Instrument" means any check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. "Payment instrument" does not include a credit card voucher, letter of credit or any instrument which is redeemable by the issuer in goods or services.

Source: Model Act Regulating Money Transmitters Section 3.

(24) "Person" means any individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, [government, governmental subdivision agency or instrumentality,] or any other legal or commercial entity.

Source: UCC Section 1-201(30)

Reporter's Note: This is the Standard Conference formulation for this definition.

(25) "Permissible Investments" means the following:

(A) cash, certificates of deposit or other debt obligations of a financial institution either domestic or foreign.

(B) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances which are eligible for purchase by member banks of the Federal Reserve System.

(C) any investment bearing a rating of one of the three highest grades as defined by

1 a nationally recognized organization that rates securities.

2 (D) investment securities that are obligations of the United States, its agencies or
3 instrumentalities or obligations that are guaranteed fully as to principal and interest of the United States, or
4 any obligations of any state, municipality or any political subdivision thereof;

5 (E) shares in a money market mutual fund, interest-bearing bills or notes or bonds,
6 debentures or stock traded on any national securities exchange or on a national over-the-counter market, or
7 mutual funds primarily composed of one or more permissible investments as described in this section;

8 (F) any demand borrowing agreement or agreements made to a corporation or a
9 subsidiary of a corporation whose capital stock is listed on a national exchange;

10 (G) receivables which are due to a licensee from its authorized delegates pursuant to
11 a contract which are not past due or doubtful of collection; or any other investments or security device
12 approved by the [superintendent].

13 **Source:** Model Act Regulating Money Transmitters Section 3.

14 (26) "Remit" means either to make direct payment of the funds to the licensee or its
15 representatives authorized to receive those funds, or to deposit the funds in a bank, credit union or savings
16 and loan association or other similar financial institution in an account specified by the licensee.

17 (27) "Responsible Individual" means a person who is employed by a licensee and who has
18 principal active management within this country or to or from locations abroad by payment instrument.
19 wire, facsimile or electronic transfer, courier or otherwise.

20 **Source:** Arizona Money Transmitter Act Section 6-1021.

21 (28) "Stored Value" means funds or monetary value [greater than \$500] represented in digital
22 electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media
23 so as to be retrievable and transferable electronically. ["Stored value" excludes funds or monetary value in
24 digital electronics format that are part of a closed-end stored value products.]

25 **Source:** FinCEN proposed amendments to the Bank Secrecy Act Regulations B Definition and Registration
26 of Money Service Businesses amending 31 C.F.R. Part 103

27 **Reporter's Note:** Most comments received in response to FinCEN's proposed amendments suggest that
28 stored value products should be eliminated altogether from the definition of money service businesses. The
29 major reason is that these products are very new and still changing rapidly. At the first committee meeting,
30 however, the Committee members observed that it might be prudent to create a framework for regulation
31 since it would take some time before the draft act would be promulgated. The comments that FinCEN
32 received also suggested that closed-end systems be excluded from a definition of stored value. This would
33 exclude private smart card and debit card systems such as university debit cards or metro cards, etc. In the
34 preamble to the proposed rule, FinCEN states that it may be appropriate to exclude closed system products
35 that are limited to facilitating small transactions (also known as "micro" transactions). See 62 Fed. Reg.
36 27894. The Federal Reserve Bank of New York has suggested that the phrase "funds or monetary value"
37 should be replaced with "intangible entitlement to be paid" because the term "funds" may give the
38 impression that a stored value product has inherent value whereas the product only has value if the issuer is
39 credit worthy.

1 The other major issue is at what dollar amount stored value products should be excluded from licensing.
2 Comments on FinCEN's proposed rules suggest that only stored value cards that are over \$500 in value
3 should be included in the definition of money service businesses. At the October drafting committee
4 meeting, there was much discussion of the issue of whether stored value products would be created in the
5 near future to carry sums over \$500. Additionally, the Committee discussed whether smaller denomination
6 products might be purchased and used to launder funds in the aggregate (e.g., a money launderer buys
7 several hundred phone cards). Alternatively, certain stored value products may hold less than \$500 but can
8 be reloaded several times and thus exceed the \$500 threshold.

9 (28) "Stored Value Provider" means a person who engages in the business or issuing [selling
10 or redeeming] open-end stored value products.

11 **Source:** New

12 **Reporter's Note:** The scope of regulation for stored value products needs to be clearly defined.

13 (29) ["Superintendent"] means the State [superintendent] of Banks or other Senior State
14 regulator charged with the regulation of money service businesses.

15 **Source:** Model Act Regulating Money Transmitters Section 3.

16 **Reporter's Note:** States use different regulatory bodies to supervise the conduct of money service
17 businesses. In some states, the superintendent of banking is vested with this responsibility. In other
18 jurisdictions, it is the Securities Commissioner or

19 (30) "Traveler's Check" means an instrument identified as traveler's check on its face or
20 commonly recognized as a traveler's check and issued in a money multiple of United States or foreign
21 currency with a provision for a specimen signature of the purchaser to be completed at the time of purchase
22 and a countersignature of the purchaser to be completed at the time of negotiation.

23 **Source:** Model Act Regulating Money Transmitters Section 3.

24 **PART 2.**

25 **SCOPE, EXCEPTIONS AND EXCLUSIONS.**

26 **SECTION 201. SCOPE.**

27 Except as otherwise provided in Section 201, this [Act] applies to money service business including check
28 sellers, check issuers, currency dealers and exchangers, money transmitters and stored value providers.

29 **SECTION 202. SUPERVISORY POWERS OF [SUPERINTENDENT].**

30 Consistent with this [Act] the [Superintendent] has supervision over all money service businesses and their
31 authorized delegates.

32 **Source:** Florida Money Transmitters Code Section 560.105.

33 **SECTION 203. EXCLUSIONS.** This [Act] does not apply to:

- 34 (a) the United States or any department, agency or instrumentality;
35 (b) the United States Post Office,

(c) the state or any political subdivisions thereof;

(d) banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States; provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks; and

(e) the provision of electronic funds transfer of government benefits for any federal, state, county or governmental agency, by a contractor for and on behalf of the United States, or any department, agency or instrumentality, or any state or any political subdivisions.

(f) businesses where sales of alcohol beverages and food are equal to or greater than fifty (50) percent of that total annual gross sales of the business,

Source: Proposed language (with modifications) of the National Licensed Beverage Association.

(g) any board of trade designated as a contract market under the Commodity Exchange Act, and any person who in the ordinary course of business provides clearance and settlement services for a board of trade,

(h) any person registered as a futures commission merchant under the federal commodities laws.

(i) any person that provides clearance or settlement services pursuant to a registration as a clearing agency, or an exemption from such registration granted under the securities laws.

Source: Proposed exclusions involving boards of trade were submitted to FinCEN by various clearing organizations who collectively several of the largest commodities exchanges and commodities/options clearing organizations.

Reporter's Note: In a letter dated October 8, 1997, these organizations recommended that FinCEN change the proposed definition of money service business to exclude regulated entities that are already subject to regulation by the SEC and the CFTC.

(j) any person registered as a securities broker-dealer under the federal securities laws.

(k) reserved for future use.

Source: Model Money Transmitter Licensing and Regulation Act (with modifications).

Reporter's Note: Exemptions are provided liberally to reduce the cost of the act to a minimum both in terms of administration and in terms of regulation. This list should be modified to match a state's existing regulatory categories and terminology as appropriate.

PART 3

LICENSING

SECTION 301. LICENSE REQUIREMENTS.

SUBPARAGRAPH (a) ALTERNATIVE 1

1 A person shall not engage in money service business activities without first obtaining a license.

2 SUBPARAGRAPH (a) ALTERNATIVE 2

3 A person shall not sell or issue payment instruments, engage in the business of receiving money for
4 transmission or transmitting money, engage in the business of exchanging payment instruments or money
5 into any form of money or payment instrument or engage in the business of receiving money for obligors
6 for the purpose of paying that obligors bills, invoices or accounts without first obtaining a license as
7 provided in this chapter or becoming an authorized delegate of the licensee with respect to those activities.
8 A licensee is under the jurisdiction of the [superintendent].

9 (b) A stored value provider who engages solely in the issuing, selling or redeeming of stored
10 value products is required to obtain a license as provided in Section 302.

11 (c) A person who is not licensed under this chapter or who is not an authorized delegate of
12 the licensee with respect to those activities is presumed nonetheless to be engaged in a business that is
13 regulated by this [Act] and that requires a license if the person advertises, solicits, or holds himself or
14 herself out as a money service business and engages in any of the activities listed in subsection (a).

15 (c) A person who engages in money service business activities regulated in this [Act] only as
16 an authorized delegate of a licensee and acts solely within the scope of a contract between the authorized
17 delegate and the licensee is not required to apply for a license. A person who is an authorized delegate but
18 who also engages in money service business activity as a principal must apply for a license.

19 (d) A license is not transferable or assignable.

20 **Source:** Model Act Regulating Money Transmitters Section 2 combined with Model Money Transmitter
21 Licensing and Regulation Act Section 5; The restrictions on transfer or assignment of a license comes from
22 California Financial Code Section 12219 which prohibits the transfer of check selling licenses.

23 **Reporter's Note:** The act will need to distinguish between authorized delegates who provide services solely
24 pursuant to contracts with money service businesses and those entities who serve as delegates but also
25 operate as principals with respect to some aspect of money services. For example, a check casher might
26 operate as a principal with respect to check cashing services and also operate as an authorized delegate for a
27 money transmitter.

28 **SECTION 302. LICENSING OF STORED VALUE PROVIDERS.**

29 (a) A stored value provider shall obtain a license in one jurisdiction that shall be designated
30 as its home state for licensing purposes.

31 (b) If the stored value provider chooses this state as its home state, the stored value provider
32 is required to obtain a license pursuant to the procedures established in Section 303 of this [Act] and to
33 comply with all other provisions of this [Act].

34 (c) If the stored value provider has designated another state as its home state, the stored value
35 provider must provide the [superintendent] with copies of its license application and proof that it has
36 obtained a license in the other jurisdiction.

(d) The stored value provider must provide the [superintendent] with any documents including applications for a license renewal.

Source: New

Reporter's Note: This section requires stored value providers to obtain a single license in one jurisdiction that will be recognized in multiple jurisdictions. The idea of a home licensing state was discussed at the October drafting committee meeting and may be an initial mechanism for regulating the stored value industry in a practical manner given the developing nature of this industry.

SECTION 303. MULTIPLE LICENSES.

Any person licensed under this [Act] shall not be required to obtain a separate license to engage different types of money service business activities.

Source: Model Act Regulating Money Transmitters Section 29 (with modifications)

Reporter's Note: This provision allows money service businesses who engage in one or more lines of business (e.g., check cashing and money transmission) to apply for one license rather than several.

SECTION 304. APPLICATION FOR LICENSE.

(a) A person that applies for a license must lodge the application in writing, under oath and in the form prescribed by the [superintendent]. The application must contain the following:

(1) the exact full name of the applicant, the date of incorporation and the state where incorporated, copies of the articles of incorporation for the applicant, a listing of all trade names or fictitious names used by the applicant and other information concurring the corporate status of the applicant. The address of the applicant's principal place of business, the address of each location where the applicant intends to transact business in this state, including any branch offices, and the name and address of any authorized delegates.

(2) for each executive officer and director of the applicant, and for an executive officer and director of any controlling person, unless the controlling person is a publicly traded company on a recognized national exchange and has assets in excess of [\$400,000,000]:

(A) a statement of personal history in the form prescribed by the superintendent;

(B) photographs, and fingerprints taken by a state law enforcement agency; and

(3) copies of the most recent tax returns filed and signed waivers for verifying submitted tax returns with the Internal Revenue service.

(4) an identification statement for each branch manager and responsible individual including:

(A) name and any aliases or previous names used;

(B) date and place of birth;

- 1 (C) alien registration information, if applicable;
2 (D) employment history and residence addresses for the preceding fifteen
3 years; and
4 (E) a social security number.
5 (5) the name and address of each authorized delegate;
6 (6) the identity of any account in any financial institution through which the
7 applicant intends to conduct any business regulated in this [Act]; and
8 (7) a financial statement, audited by a licensed independent certified public
9 accountant, showing that the applicant's net worth is not less than [one hundred thousand dollars (\$100,000)]
10 plus [ten thousand dollars (\$10,000)] for each location or authorized delegate to a maximum of [five
11 hundred thousand dollars (\$500,000)] calculated in accordance with generally accepted accounting
12 principles.
13 (8) copies of any financial statement that the applicant has filed with the federal
14 Securities Exchange Commission within the past three years.
15 (9) if the applicant is a wholly owned subsidiary of a corporation that has filed
16 financial statements with the federal Securities Exchange Commission in any of the past three years, copies
17 of those filings.
18 (10) a sample of the contract that the applicant proposes to use in its creation of
19 authorized delegates if any;
20 (11) a sample form of the payment instrument that the applicant proposes to use if any.

21 **Source:** Arizona Money Transmitter Law Section 6-1203; Model Money Transmitter Licensing and
22 Regulation Act Section 7.

23 **Reporter's Note:** The licensing application is the first point at which the state may protect the public from
24 permitting entry by those persons who would bring discredit on the industry and the first source of
25 information for investigators and regulators in the event that there is future misconduct by the licensee. The
26 information required of the licensee should be comprehensive. As an alternative to a uniform licensing
27 regime, some states have separate licensing regimes for check cashers and currency exchangers and dealers.
28 The information supplied during the application process is fairly similar. The net worth of the licensee,
29 however, differs according to the type of business activities. The Model Money Transmitter Licensing and
30 Regulation Act attempts to provide a comprehensive net worth standard for all money service businesses.
31 The proposed Nondepository Providers Act, however, could specify different levels of net worth for
32 different money service businesses.

33 **SECTION 305. ISSUANCE OF LICENSES.**

34 (a) Upon the filing of a complete application, the [superintendent] must investigate the
35 financial condition and responsibility, financial and business experience character and general fitness of the
36 applicant. At his or her discretion, the [superintendent] may conduct an on-site investigation of the
37 application, the reasonable cost of which shall be borne by the applicant. The [superintendent] shall issue a

1 license to an applicant if the [superintendent] finds that all of the following conditions are met:

2 (1) the appellant has complied with section 303 of the [Act].

3 (2) the competence, experience and integrity of the officers, directors and
4 controlling persons and any proposed management personnel indicate that it is in the interest of the public to
5 permit such person to participate in the activities of the licensee; and

6 (3) the applicant has paid the required license fee.

7 (b) the [superintendent] shall approve or deny every application for an original license within
8 [120] days after the date an application is complete. This period may be extended by the written consent of
9 the applicant. The [superintendent] shall notify the applicant of the date on which the application is
10 determined to be complete. In the absence of approval or denial of the application, or a consent to the
11 extension of the [120] day period, the application is considered approved. If the application is considered
12 approved, the [superintendent] shall issue the license effective as of the first business day after the [120] day
13 period or any extended period.

14 SECTION 306 ALTERNATIVE 1.

15 **SECTION 306. LICENSE RENEWAL.**

16 (a) The [superintendent] shall, by rule, establish an annual fee for renewal of a license under
17 this [Act].

18 (b) The renewal fee shall be accompanied by a report, in a form prescribed by [the
19 superintendent], which form shall be sent by the [superintendent] to each licensee no later than three months
20 immediately proceeding the date established by the [superintendent] for license renewal. The licensee must
21 include the following in its annual renewal report:

22 (1) a copy of its most recent audited consolidated annual financial statement, or in
23 the case of a licensee that is a wholly-owned subsidiary of another corporation, the consolidated audited
24 annual financial statement of the parent corporation may be filed in lieu of the licensee's annual audited
25 financial statement.

26 (2) The number of payment instruments sold by the licensee in the state, the dollar
27 amount of those instruments and the dollar amount of those instruments currently outstanding for the most
28 recent quarter for which data is available prior to the date of filing of the renewal application, but in no
29 event more than [120] days prior to the renewal date.

30 (3) any material changes to any information submitted by the licensee on its original
31 license application which have not previously been reported to the [superintendent] on any other report
32 required to be filed under this [Act].

33 (4) a list of the licensee's permissible investments, if applicable.

34 (5) a list of the locations within this state at which business regulated by this act is

1 being conducted by either the licensee or its authorized delegate. If the licensee is a stored value provider,
2 the licensee must provide a list of all authorized delegates doing business within all states in which it
3 operates.

4 (c) a licensee that has not filed a renewal report or paid its renewal fee by the renewal filing
5 deadline and has not been granted an extension of time to do so by the [superintendent] shall be notified in
6 writing by the [superintendent] that a hearing is scheduled at which time the licensee will be required to
7 show cause why its license should not be suspended pending compliance with these requirements,

8 **Source:** Model Act Regulating Money Transmitters, Section 11.

9 SECTION 306 ALTERNATIVE 2

10 SECTION 306. LICENSE RENEWAL

11 A licensee shall pay a renewal fee as prescribed by the [superintendent] on or before [date] of each
12 year. The renewal fee shall be accompanied by a renewal application in the form prescribed by the
13 [superintendent]. A license for which no renewal fee and application have been received by [date] of each
14 year shall be suspended. A licensee may renew a suspended license no later than [date] of the year of
15 expiration by paying the renewal fee plus [one hundred dollars (\$100)] for each day the renewal fee and
16 application are not received by the [superintendent]. A license expires on [date] of each year, unless earlier
17 renewed, revoked, or surrendered. A license shall not be granted to the holder of an expired license or to an
18 incorporator, director or officer of the holder of an expired license except on compliance with the
19 requirements provided in this article,

20 **Source:** Model Money Transmitter Licensing and Regulation Act Section 9.

21 SECTION 306. LICENSE FEE.

22 (a) Each application for a license must be accompanied by an application fee of [one
23 thousand dollars (\$1,000)] and a license fee of [three thousand dollars (\$3,000)]. The license fee must be
24 refunded if the application is denied. No application fee is refunded. All application fees collected by the
25 [superintendent] under this [Act] must be transmitted to the [state treasurer] and are set aside by the
26 treasurer in a separate fund for the use of the [superintendent] in the administration and enforcement of this
27 [Act].

28 **Source:** Model Money Transmitter Licensing and Regulation Act Section 8.

29 SECTION 308. BOND AND NET WORTH REQUIREMENTS.

30 SUBSECTIONS (a) AND (b) ALTERNATIVE 1

31 (a) Each application must be accompanied by a surety bond, irrevocable letter of credit or
32 other similar security device (hereinafter "security device") acceptable to the [superintendent] in the amount
33 of [fifty-thousand dollars (\$50,000)]. Applicants or licensees who engage in no business regulated by this

1 [Act] either than as check cashers or foreign currency dealers or exchangers need not post the bond required
2 by this section.

3 (b) If the applicant proposes to engage in business under this [Act] at more than one location,
4 through authorized delegates or otherwise, the amount of the security device will be increased by [ten
5 thousand dollars (\$10,000)] per location, up to a maximum of [two hundred and fifty thousand dollars
6 (\$250,000)]. The security device shall be in a form satisfactory to the [superintendent] and shall run to the
7 state for the benefit of any claimants against the licensee to secure the faithful performance of the
8 obligations of the licensee with respect to the receipt, handling, transmission and payment of money in
9 connection with the sale and issuance of payment instruments and the transmission of money.

10 SUBSECTIONS (a) and (b) ALTERNATIVE 2

11 (a) Each application must be accompanied by a surety bond, irrevocable letter of credit or
12 other similar security device (hereinafter "security device") acceptable to the [superintendent]. Applicants
13 or licensees who engage in no business regulated by this [Act] either than check cashing or foreign currency
14 exchange need not post the bond required by this section.

15 (b) The bond shall be in the amount of [twenty five thousand dollars (\$25,000)] for a licensee with
16 five or fewer authorized delegates and locations; [one hundred thousand dollars (\$100,000)] for a licensee
17 with more than 5 but fewer than 201 authorized delegates and locations, to a maximum of [two hundred and
18 fifty thousand dollars (\$250,000)] and an additional [five thousand (\$5,000)] for each authorized delegate
19 in excess of 200 authorized delegates and locations, to a maximum of [five hundred thousand dollars
20 (\$500,000)]

21 **Source:** Model Money Transmitter Licensing and Regulation Act Section 8.

22 **Reporter's Note:** At present, money service businesses that engage solely in check cashing or currency
23 dealing and exchange do not have to post bond or a security device. Alternative subsections (a) and (b) are
24 derived mainly from the Model Money Transmitter Licensing and Regulation Act attempts to provide a
25 uniform standard for all money service businesses. An alternative would be to create different security
26 requirements for different types of money service businesses. For example, the Texas Currency Exchange
27 Act Section 10 requires that currency exchangers obtain a bond or letter of credit based on the licensee's
28 currency exchange and transmission business. The minimum value of the bond or letter of credit is
29 \$25,000.

30 SUBSECTIONS (a) and (b) ALTERNATIVE 3

31 (a) Each application must be accompanied by a surety bond, irrevocable letter of credit or
32 other similar security device (hereinafter "security device") acceptable to the [superintendent].

33 (b) The security device shall be in the amount of:

34 (1) [twenty five thousand dollars (\$25,000)] for a currency dealer or exchanger,
35 check casher, [or stored value provider].

36 (2) [one hundred thousand (\$100,000)] for a check seller, check issuer or money
37 transmitter for the first location at which the licensee engages in money service business activities and [fifty

1 thousand dollar (\$50,000)] for each additional location at which the licensee engages in money service
2 business activities.

3 **Source:** Texas Finance Code Sections 152.206 (Check Sellers Surety Bond) and Section 153.09 (Currency
4 Exchange, Transportation or Transmission Surety Bond).

5 **Reporter's Note:** Alternative 3 is an attempt to differentiate between check cashers and currency
6 exchangers who are required to have a lower surety bond or security device.

7 (c) In the case of a bond, the aggregate liability of the surety in no events shall exceed the
8 principal sum of the bond. Claimants against the licensee or the authorized delegates may themselves bring
9 suit directly on the security device or the [superintendent] may bring suit on behalf of such claimants. The
10 bond is conditioned on the compliance of the licensee, including its directors, officers, authorized delegate
11 and employees, with this [Act]. The bond shall be payable to any person injured by the wrongful act,
12 default, fraud, or misrepresentation of the licensee, his or her authorized delegates or employees or to the
13 state for the benefit of the person injured. Only one bond is required of any licensee irrespective of the
14 number of offers, directors, locations, employees, or authorized delegates of the licensee.

15 (d) In the case of an irrevocable letter of credit, the letter of credit must run to the state, for
16 the benefit of the [appropriate state agency] and for the benefit of all persons injured by the wrongful act,
17 omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Draws
18 upon an irrevocable letter of credit must be available by sight drafts in amounts determined by the
19 [superintendent] up to the aggregate amount of the irrevocable letter of

20 (e) The security device shall remain in effect until cancellation, which may occur only after
21 thirty days, written notice to the [superintendent]. Cancellation shall not affect any liability incurred during
22 this period

23 (f) The security device shall remain in place for no longer than [five] years after the licensee
24 ceases money service operations in the state. However, the [superintendent] may permit the security device
25 to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment
26 instruments outstanding in this state are reduced. The superintendent may also permit a licensee to
27 substitute a letter of credit or other form of security device acceptable to the [superintendent] for the
28 security device in place at the time the licensee ceases money service business activities in the state.

29 **Source:** Model Act Regulating Money Transmitters Section 8, Delaware Code, Chapter 27, Section 2714.

30 **Reporter's Note:** As discussed at the Drafting Committee's initial meeting in October 1997, irrevocable
31 letters of credit provide an alternative for licensee's to the use of surety bonds.

32 (g) In lieu of the bond prescribed in this section, an applicant for a license, or a licensee may
33 deposit with the [superintendent] cash, or alternatives to cash acceptable to the [superintendent] in the
34 amount of the required bond. The principal amount of the deposit may be released to the applicant for a
35 license or licensee only upon written authorization of the [superintendent] or on the order of a court of

competent jurisdiction.

Source: Arizona Money Transmitter Act Section 6-1205. Model Money Transmitter Licensing and Regulation Act Section 8.

Reporter's Note: Fees should be set at a level that will make the regulatory function self-supporting. The net worth requirements have been established at a relatively low level, with a sliding scale to take into account licensee size. The bond requirement is a barrier to entry for unstable companies. Alternatives, however, are provided to the bond requirement in the form of cash or cash alternatives. Licensees may also be permitted to deposit specified liquid assets in the amount of the bond.

SECTION 309. NET WORTH.

A licensee shall maintain a net worth that of [one-hundred-thousand dollars (\$100,000)] plus [ten thousand dollars (\$10,000)] for each location or authorized delegate to a maximum of [five hundred thousand dollars (\$500,000)].

Source: Model Money Transmitter Licensing and Regulation Act Section 8.

Reporter's Note: An alternative to a general net worth requirement is to provide varying net worth requirements for different types of money service businesses. For example, Section 36a-604 of the Connecticut Money Order and Travelers Check Licensees Act requires that check sellers and money transmitters requires that each licensee that issues money orders must have a net worth of at least \$100,000. Issuers of travelers checks must have a net worth of at least \$1 million. Check cashers, by contrast, are required to have liquid assets of \$10,000 for general check cashing facilities and \$2,500 for "limited" check cashing facilities (i.e., mobile facilities that are operated by employers for no more than 2 days per week where employees may cash their paychecks). See id. at Section 36a-581.

SECTION 310. PRINCIPAL AND BRANCH OFFICE; NOTICES.

(a) A licensee shall designate and maintain a principal place of business for the transaction of business regulated by this [Act]. If a licensee maintains one or more places of business in this state, the licensee shall designate a place of business in this state as its principal place of business for purposes of this [Act]. The licensee shall specify the address of the principal place of business and shall designate a responsible individual for its principal place of business.

(b) If a licensee maintains one or more locations in this state, and those locations are to be under the control of the licensee and not under the control of the authorized delegates, the licensee shall obtain a branch office license from the [superintendent] at the time the licensee files its license application.

(c) If branch offices are added by the licensee, the licensee shall file with the [superintendent] an application for a branch office license. The licensee shall indicate on its face the address of the branch officer. The licensee shall designate a manager for each branch office to oversee that office. The [superintendent] may disapprove the designated manager at the time of the filing of an application for a branch office licensee or at any later time if the [superintendent] finds the competence, experience and integrity of the branch manager warrant disapproval. A person may be designated a branch manager for more than one branch. The licensee shall submit a licensee fee as prescribed in Section 303.

(d) A licensee shall prominently display the money transmitter license in its principal place of

1 business and branch office license in each branch office. Each authorized delegate shall prominently
2 display at each location a notice in the form prescribed by the [superintendent] that indicates that the
3 authorized delegate is an authorized delegate of the licensee.

4 (e) If the address of the principal place of business or of any branch office changes, the
5 licensee shall immediately notify the [superintendent] of the change of address.

6 **Source:** Arizona Money Transmitter Act Section 6-1207.

7 **PART 4.**

8 **AUTHORIZED DELEGATES.**

9 **SECTION 401. RELATIONSHIP BETWEEN LICENSEES AND AUTHORIZED** 10 **DELEGATES.**

11 (a) A licensee may conduct the business regulated under this [Act]. at one or more locations
12 in this state through authorized delegates designated by the licensee if the licensee has a net worth of at least
13 [one hundred thousand dollars (\$100,000)] plus [ten thousand dollars (\$10,000)] for each authorized
14 delegate not to exceed [five hundred thousand dollars (\$500,000)] according to financial statements
15 calculated in accordance with generally accepted accounting principals audited by a licensed independent
16 certified public accountant.

17 (b) Each contract between a licensee and an authorized delegate shall require the authorized
18 delegate to operate in full compliance with the law and shall contain an appendix copy of this [Act]. The
19 licensee shall provide each authorized delegate with operating policies and procedures sufficient to permit
20 compliance with the delegate with the provisions of this [Act] and rules adopted pursuant to this [Act]. The
21 licensee shall promptly update its policies and procedures to permit compliance with those laws and rules.

22 (c) Neither a licensee nor an authorized delegate may authorize subdelegates without the
23 written consent of the [superintendent].

24 (d) An authorized delegate shall remit all funds owing to the licensee in accordance with the
25 terms of the contract between the licensee and the delegate. Failure of an authorized delegate to remit all
26 money owing to a licensee within the time presented shall result in liability of the authorized delegate to the
27 licensee for [three times] the licensee's actual damages.

28 (e) An authorized delegate is not liable for any obligation imposed on a licensee by this [Act]
29 with respect to the business for which it is a delegate. On suspension or revocation of a license or the
30 failure of a licensee to renew its license, the [superintendent] shall notify all authorized delegates of the
31 licensee who are on record with the [superintendent] of the [superintendent's] action. On receipt of this
32 notice, an authorized delegate shall immediately cease to operate as a delegate of the licensee.

33 **Source:** Model Money Transmitter Licensing and Regulation Act Section 10.

34 **SECTION 402. SCOPE OF AUTHORIZED DELEGATE ACTIVITY.**

1 (a) If an authorized delegate conducts business for which a license is required under this
2 [Act] that is outside the scope of activity conferred in the contract between the authorized delegate and the
3 licensee. This activity is unlicensed activity. An authorized delegate of a licensee holds in trust for the
4 benefit of the licensee all monies received from the sale and delivery of the licensee's payment instruments
5 or moneys received for transmission.

6 (b) An authorized delegate consents to the [superintendent's] inspection, with or without prior
7 notice to the licensee or authorized delegates of the books and records of authorized delegates of the
8 licensee when the [superintendent] has a reasonable basis to believe that the licensee or authorized delegate
9 is in noncompliance with this [Act].

10 **Source:** Model Money Transmitter Licensing and Regulation Act Section 10.

11 **SECTION 403. PROHIBITED TRANSACTIONS.**

12 A person shall not engage in conduct requiring a license under this [Act] as an authorized delegate
13 of a principal if that principal is not licensed under this chapter. A person who does so shall be considered
14 to be the principal seller, issuer or actor rather than an authorized delegate and is liable to the holder,
15 remitter or customer as the principal.

16 **Source:** Arizona Money Transmitter Act Section, Model Money Transmitter Licensing and Regulation Act
17 Section 10.

18 **Reporter's Note:** It is important to clearly delineate the rights and duties of a licensee and his or her
19 authorized delegate. This section defines the relationship between the parties and includes the imposition of
20 a trust for the benefit of the licensee for moneys received by the delegate from the sale of the licensee's
21 products or services.

22 **PART 5**

23 **EXAMINATIONS**

24 **SECTION 501. AUTHORITY TO CONDUCT EXAMINATIONS.**

25 (a) The [superintendent] may conduct an annual on-site examination of a licensee upon [45]
26 days written notice to the licensee. Should the [superintendent] conclude that an on-site examination is
27 necessary, the licensee shall pay all reasonably incurred costs of the examination. If the [superintendent]
28 determines, based on the licensee's financial statements and past history of operations in the state that an
29 on-site examination is unnecessary, the on-site examination may be waived.

30 **Source:** Model Act Regulating Money Transmitters Section 14.

31 (b) An authorized delegate is subject to examination by the [superintendent] at the discretion
32 of the [superintendent]. The licensee is responsible for the payment of the examination fees for an
33 examination of its authorized delegate to the extent that the examination relates to activities conducted by
34 the authorized delegate on behalf of the licensee.

35 **SECTION 502. JOINT EXAMINATIONS.**

(a) On-site examinations of records prescribed in this chapter may be conducted in conjunction with representatives of other state agencies or agencies of another state or of the federal government as determined by the [superintendent]. In lieu of an on-site examination, the [superintendent] may accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent licensed certified public accountant. Joint examination or acceptance of an examination report shall not be considered a waiver of examination assessment provided by law. Joint reports and reports accepted under this subsection are considered official reports of the [superintendent] for all purposes.

(b) Information obtained during examinations under this [Act] shall be disclosed only as provided in Part 12 of this [Act].

Source: Model Act Regulating Money Transmitters Section 14.

Reporter's Note: The use of joint examinations is an important feature of the Proposed Nondepository Providers Act that will reduce some of the increased finance costs that may be incurred as a result of licensing and regulation.

PART 6.

REPORTS AND RECORDKEEPING

SECTION 601. REPORTS.

(a) A licensee shall file with the [superintendent] within [forty-five (45)] days after the end of each fiscal quarter a consolidated financial statement including a balance sheet, income and expense statements and a list of all authorized delegates, branch managers, responsible individuals and locations within this state that have been added or terminated by the licensee within the fiscal quarter. Information regarding branch managers and responsible individuals shall include the information prescribed in, For locations and authorized delegates the licensee shall include the name and street address of each location and authorized delegate.

(b) A licensee shall file with the [superintendent] within [fifteen (15)] days of its occurrence a report of any of the following events:

- (1) the licensee's filing for bankruptcy or reorganization;
- (2) the institution of license revocation proceedings in any jurisdiction in which the licensee engages in business or is licensed; or
- (3) a felony indictment or conviction of the licensee or of an officer, director, controlling person, branch manager, responsible individual or authorized delegate related to licensed activity or involving conduct defined money laundering or specified unlawful activity.

(4) A licensee who fails to file any report required by this section on or before the day designated for filing the report, or fails to include any prescribed information in the report, shall pay a penalty of [one hundred dollars (\$100)] for each day that the report is delayed or incomplete, unless the

[superintendent], for good cause shown , reduces the amount to be paid, or unless the time to file the report was extended in writing by the [superintendent].

Source: Model Money Transmitter Licensing and Regulation Act Section 13

Reporter's Note: Reports are essential to the proper regulation of problem delegates or licensees. Although on-site examinations are authorized, the reporting requirements provide a cost efficient mechanism for regulators and industry members alike. Certain significant events must be reported immediately including a money laundering allegation against a delegate.

SECTION 602 ALTERNATIVE 1

SECTION 602. BOOKS AND RECORDS.

(a) Each licensee shall maintain the following books, accounts and records for a period of [three (3)] years as applicable:

- (1) a record of each payment instrument sold if applicable;
- (2) a record of each payment instrument cashed if applicable;
- (3) a general ledger contains all assets, liability, capital, income and expense accounts (which general ledger shall be posted at least monthly);
- (4) settlement sheets received from authorized delegates,
- (5) bank statements and bank reconciliation records;
- (6) records of outstanding payment instruments;
- (7) records of each payment instrument paid within the [three (3)] year period;
- (8) a list of the names and addresses of all of the licensee's authorized delegates.

(b) Those records may be maintained in paper, photographic, electronic or similar format.

(c) Records may be maintained at a location other than within this state so long as they are made accessible to the [superintendent] on [seven (7)] days written notice.

Source: Model Act Regulating money Transmitters, Section 15 (with modifications).

Reporter's Note: Several states have recordkeeping provisions (especially for check cashers) that require licensees to maintain more detailed records. Connecticut, for example, requires check cashers to maintain a daily record of the checks cashed and specifies the different information that must be logged with respect to each check or money order. Connecticut Code Section 36a-588-3.

SECTION 602 ALTERNATIVE 2

SECTION 602. BOOKS AND RECORDS.

(a) Each licensee shall keep and use in its business books, accounts and records in accordance with generally accepted accounting principles that will enable the [superintendent] to determine whether that licensee is complying with the provisions of this chapter. Each licensee and authorized delegate shall preserve its records for at least [five] years after making the final entry on any transaction. each authorized delegate shall keep records as required by the [superintendent].

(b) For each authorized delegate, the licensee shall maintain records that demonstrate that the

1 license conducted a reasonable background investigation of each authorized delegate, A licensee shall
2 preserve those records for at least [five (5)] years after the authorized delegate's most recent designation by
3 the licensee. For an authorized delegate, the records shall be available at all times.

4 (c) The records of the licensee regarding the business regulated under this [Act] shall be
5 maintained at its principal place of business, or with notice to the [superintendent], at another location
6 designated by the licensee. If the records are maintained outside of this state, the [superintendent] may
7 require that the licensee make those records available to the [superintendent] at his or her office not more
8 than [] business days after demand. The [superintendent] may further require that those records be
9 accompanied by an individual who is available to answer questions regarding those records and the business
10 regulated under this [Act]. The [superintendent] may require the appearance of a specific individual or
11 may request the licensee to designate an individual knowledgeable with regard to the records and the
12 business

13 **SECTION 603. TRANSACTION RECORDS.**

14 (a) Every payment instrument sold by a licensee directly or indirectly through an authorized
15 delegate must bear the name of the licensee and a unique consecutive number clearly stamped or imprinted
16 on the payment instrument.

17 (b) For every transaction involving the receipt of funds from a customer, the licensee or
18 authorized delegate who receives the money shall maintain write records of the transaction. The records
19 may be reduced to computer or other electronic medium. The records collectively must contain the name of
20 the licensee, the street address of the location where the money was received, the name and street address of
21 the customer if reported to the licensee or authorized delegate, the approximate date of the transaction, the
22 name or other information from which, together with other contemporaneous records, the [superintendent]
23 can determine the identity of those employees of the licensee or authorized delegate who may have
24 conducted the transaction, and the amount of the transaction. The information required by this section must
25 be available through the licensee or authorized delegate for at least [] years from the date of the
26 transaction.

27 **Source:** Model Money Transmitter Licensing & Regulation Act Section 15.

28 **PART 7**

29 **MONEY LAUNDERING REPORTING REQUIREMENTS**

30 **SECTION 701. RECORDS AND REPORTS OF CERTAIN TRANSACTIONS.**

31 (a) Licensees must comply with federal currency reporting, record keeping and suspicious
32 transaction reporting requirements as set forth in 31 U.S.C Section [], 31 C.F.R. Part 103 and other
33 relevant federal and state law pertaining to money laundering.

34 (b) The licensee shall file appropriate reports with the [appropriate state agency]

(c) The timely filing of reports required by 31 U.S.C. Section [] with the appropriate federal agency is considered compliance with this section unless the reports are not regularly and comprehensively transmitted by the federal agency to the [appropriate state agency].

Source: Abbreviated version of Florida Money Transmitter Code Section 560.128.

Reporter's Note Approximately 10 states require that NDPs comply with all federal and state money laundering and currency transaction reporting laws. States laws typically replicate the federal law and require that cash transactions in excess of \$10,000 be reported to a state authority as well as to Treasury. Most of the state reporting legislation does not specifically address money service businesses (but may apply to money service businesses by implication). Several states including Colorado, Connecticut, Idaho, Indiana and Oklahoma require financial institutions to file suspicious activity reports concurrently with federal and state authorities. Arizona has its own suspicious activity form for financial institutions. Suspected money laundering activities are reported to Arizona's Attorney General on a one page form. Georgia states that each financial institution shall keep a record of currency transactions in excess of \$10,000 and that such reports shall be filed with the state within 15 days of the transaction. The Department of Banking and Finance, however "may promulgate regulations that permit currency transaction reports filed by financial institutions with federal agencies pursuant to requirements of federal law to satisfy the currency transaction filing requirements . . . provided that the department . . . will have access to the currency transaction reports filed with the federal agencies." Georgia Code Section 7-1-912.

PART 8

PERMISSIBLE INVESTMENTS

SECTION 801. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

(a) Every licensee shall maintain at all times permissible investments that comply with either of the following:

(1) 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, provided the market value of these permissible investments is at least 95 percent of the net carrying value.

(2) a net carrying value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all its outstanding payment instruments.

(b) Notwithstanding an other provision of this [Act], the [superintendent], with respect to any particular licensees, may limit the extent to which any class of permissible investments as defined in Section 101, may be considered a permissible investment, except for money and certificates of deposit. The [superintendent] may by rule prescribe or by order allow other types of investments which the [superintendent] determines to have substantially equivalent safety as other permissible investments as defined in Section 101.

Source: Model Money Transmitter Licensing and Regulation Act Section 14..

PART 9

ACQUISITION OF CONTROL

SECTION 901. PROCEDURES FOR CHANGE OF CONTROL.

(a) A person shall not directly or indirectly acquire control of a licensee or controlling

1 persons without the prior written approval of the [superintendent], except as otherwise provided in this
2 section.

3 (b) A person shall submit a written application for approval to acquire control of a licensee.
4 The application shall be accompanied by information as the superintendent may require. The
5 [superintendent] shall act on the application within [] days after the date on which the application is
6 complete, unless the applicant consents in writing to an extended period. An application that is not denied
7 must be considered approved as of the first business day after the expiration of that period.

8 (c) The [superintendent] may deny the application to acquire control of a licensee if the
9 [superintendent] finds that the accusation of control is contrary to law or determines that disapproval is
10 reasonably necessary to protect the interest of the public. In making that determination, the [superintendent]
11 shall consider both of the following:

12 (1) whether the financial condition of the person that seeks to control the licensee
13 might jeopardize the financial condition of the licensee or prejudice the interests of the public in the conduct
14 of business regulated under this [Act].

15 (2) whether the competence, experience, integrity and moral character of the persons
16 that seek to control the licensee, or the offers directors and controlling persons of the person that seek to
17 control the licensee, indicate that it would not be in the interest of the public to permit that person to control
18 the licensee.

19 (d) Nothing in this section prohibits a person from negotiating or entering into agreement
20 subject to the condition that the acquisition of control is not effective until approval of the [superintendent]
21 is obtained.

22 (e) This section does not apply to any of the following persons or transactions:

23 (1) a registered dealer who acts as an underwriter or member of a selling group in a
24 public offering of the voting securities of a licensee or the controlling person of a licensee.

25 (2) a person who acts as a proxy for the sole purpose of voting at a designated
26 meeting of the security holders of a licensee or controlling persons of a licensee.

27 (3) a person who acquires control of a licensee or controlling person of a licensee by
28 devise or descent.

29 (4) a person who acquires control of a licensee or controlling person as a personal
30 representative, custodial, guardian, conservator, trustee, or any other officer appointed by a court of
31 competent jurisdiction or by operation of law.

32 (5) a pledge of a voting security of a licensee or controlling person who does not
33 have the right, as pledge to vote that security.

34 (6) a person or transaction that the [superintendent] by rule or order exempts in the

1 public interest.

2 (f) Before filing an application for approval to acquire control, a person may request in
3 writing a determination from the [superintendent] as to whether that person will be considered in control
4 upon consummation of a proposed transaction. If the [superintendent] determines in responds to that
5 request that the person will not be in control with the meaning of this section, the [superintendent] shall
6 enter an order to that effect and the proposed transaction is not subject to the requirement of this section.
7 **Source:** Model Money Transmitter Licensing and Regulation Act Section 18.

8 **PART 10**

9 **ENFORCEMENT**

10 **SECTION 1001. CEASE AND DESIST ORDERS, SUSPENSION AND REVOCATION** 11 **POWERS.**

12 (a) The [superintendent] may issue a cease and desist order or removal order, deny a license
13 application or suspend or revoke a license previously issued pursuant to this [Act], or order a licensee to
14 revoke the designation of an authorized delegate whose conduct has contributed to the event if any of the
15 following events occur:

16 (1) the licensee knowingly fails to comply with any provision of the [Act] or any
17 rule or order adopted pursuant to the [Act].

18 (2) the licensee engages in fraud, misrepresentation, deceit or gross negligence in
19 any transaction involving money transmission.

20 (3) the licensee fails to maintain, preserve and keep available for examination, all
21 books, accounts or other documents equipped by the [Act] or any rules or orders adopted pursuant to the
22 [Act].

23 (4) the licensee or authorized delegate refuses to permit the examination or
24 inspection of its books or records in an investigation or examination by the [appropriate state agency]
25 pursuant to the provisions of the [Act] or to comply with a subpoena issued by the [appropriate state
26 department].

27 (5) the licensee has failed to comply with its recordkeeping and reporting
28 requirements under Section of the [Act].

29 (6) an authorized delegate has violated any provision of the Bank Secrecy Act or
30 other state or federal anti-money laundering statutes or has violated any rule or regulation adopted pursuant
31 to this [Act] as a result of a course of negligent failure to supervise or as a result of the willful misconduct
32 of the licensee.

33 (7) the licensee is insolvent or has suspended payment of its obligations, has made
34 an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they

1 become due.

2 (8) the licensee fails to remove an authorized delegate after the [appropriate state
3 agency] has issued and served upon the licensee a final order setting forth a finding that the authorized
4 delegate has knowingly violated any provision of the [Act].

5 (9) the competence, experience, integrity or overall moral character of the licensee
6 or authorized delegate or any controlling persons of the licensee or authorized delegate indicates that it is
7 not in the public interest to permit that person to participate in the money service business.

8 (10) the licensee knowingly fails to make any report required by this [Act].

9 **Source:** Florida Money Transmitters Code Section 560.11; Model Money Transmitter Licensing and
10 Regulation Act Sections 11 and 12.

11 **Reporter's Note:** Suspension and revocation of a license may only occur after a hearing in accordance with
12 the state's administrative procedure act. Licensee violation of state money laundering prohibitions is
13 specified on the list, as is delegate violations of money laundering prohibitions done "as a result of a course
14 of negligent failure to supervise or of the willful misconduct of the licensee." A willful misconduct
15 standard has been chosen because a strict liability standard may result in consequences disproportionate to
16 the social harm involved from the delegate's activity. Some states provide more detailed standards for when
17 a cease and desist order becomes effective. The Texas Currency Exchange Transportation and Transmission
18 provisions of the Texas Finance Code provide that a cease and desist order takes effect on issuance if the
19 Banking Commissioner if the Commissioner finds a threat of immediate and irreparable harm to the license
20 holder or the public. If no immediate or irreparable harm is found, the order is not effective before 10 days
21 after the order is received. The order must be served on the license holder, the license holder's board of
22 directors and any offending principal. Texas Finance Code Section 153-407.

23 **SECTION 1002. AUTHORIZED DELEGATES, CEASE AND DESIST ORDERS.**

24 (a) The [superintendent] may issue an order to cease and desist against a licensee or its
25 authorized delegate including an order requiring the licensee to cease conducting its business through an
26 authorized delegate and to take appropriate affirmative action if the [superintendent] finds that:

27 (1) the authorized delegate is violating any applicable law, rule or regulation, or any
28 order of the [superintendent].

29 (2) the authorized delegate has failed to cooperate with any examination or
30 investigation by the [superintendent],

31 (3) the competence, experience, or integrity of the authorized delegate or any
32 controlling person of the authorized delegate indicates that it is not in the public interest to permit that
33 person to participate in the money services business.

34 (4) the financial condition of the authorized delegate jeopardizes the interests of the
35 public in the conduct of money service business;

36 (5) the authorized delegate is engaging in any unsafe or unsound practice.

37 (b) A licensee is responsible for any act of its authorized delegates if the licensee had actual
38 knowledge that the act violates this [Act] and the licensee was willfully allowed the act to continue. The

responsibility is limited to conduct engaged in by the authorized delegate pursuant to the authority granted to it in the contract between the licensee and the authorized delegate.

Source: Model Money Transmitter Licensing and Regulation Act Section 10.

Reporter's Note: Section 1002 and 1003 places responsibility on the licensee for the conduct of the authorized delegate to the extent that the licensee knew of the delegate's misconduct or allowed it to continue. The committee needs to consider whether scope of licensee liability and/or responsibility for authorized delegate conduct needs to be extended to willful blinders or recklessness. Additionally, the committee may consider further defining how licensee should supervise authorized delegates.

SECTION 1003. CONSENT ORDERS.

(a) The [superintendent] may enter into consent orders at any time with any person to resolve any matter arising under this [Act]. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement with the terms contained therein. A consent order need not constitute an admission by any person that any provision of this [Act], or any rule, regulation or order has been violated.

Source: Model Act Regulating Money Transmitters Section 24.

SECTION 1004. CIVIL PENALTIES.

SUBSECTION (a) ALTERNATIVE 1

(a) The [superintendent] may impose a civil penalty against any person who violates any provision of this [Act], a cease and desist order of the [superintendent], or a consent order with the [superintendent]. No proceeding shall be initiated and no fine shall accrue until after the person is notified in writing of the nature of the violation and is afforded a reasonable period of time to correct the violation. A fine may not exceed [one hundred dollars (\$100)] a day for each violation.

SUBSECTION (a) ALTERNATIVE 2

(a) Any person who knowingly violates any provision of this [Act] may be assessed a civil penalty in an amount equal to the gross business conduct in connection with the violation plus the state's costs and expenses of the investigation and prosecution of the matter, including reasonable attorney's fees.

(b) The [superintendent] may impose a fine not to exceed [one thousand (\$1,000)] per day for each day a person engages in money services business activities without a license.

Source: Florida Money Transmitters Code Section 560.117.

(c) The attorney general [banking department/regulatory agency which will have authority] may bring an action in the [name of appropriate court or adjudicatory body] in which a violation of this section is alleged to have occurred or in any other county in which venue is permitted under [reference to state venue statutes and rules] in the same manner as the filing of other civil actions.

Source: Model Money Transmitter Licensing and Regulation Act Section 23.

Reporter's Note: As discussed at the first meeting of the Drafting Committee, civil penalties were a preferred enforcement mechanisms due to the commercial nature of the NonDepository Proposed Act.

1 SECTION 1005 ALTERNATIVE 1.

2 **SECTION 1005. CRIMINAL PENALTIES.**

3 (a) Any person who directly or through another person violates or attempts to violate any
4 provision of this [Act] for which a different penalty is no specifically provided is guilty of a [reference to
5 state classification] felony. Each transaction in violation of this [Act] and each day that a violation
6 continues is a separate offense.

7 (b) A person who knowingly makes a false statement, misrepresentation or false certification
8 in any application, financial statement, account record, customer receipt, report or other document filed or
9 required to be maintained under this [Act] or who knowingly makes a false entry or omits a material entry
10 in such document is guilty of a [reference to state classification] felony.

11 (c) A person who refuses to permit any lawful examination or investigation by the
12 superintendent or attorney general is guilty of a [reference to state classification] felony.

13 **Source:** Model Money Transmitter Licensing and Regulation Act Section 22.

14 **Reporter's Note:** General criminal penalties for all violations are typical of regulatory codes. False
15 statements and other misrepresentations are at the core of the regulatory process and therefore are listed
16 separately.

17 SECTION 1005 ALTERNATIVE 2

18 **SECTION 1005. CRIMINAL PENALTIES.**

19 (a) Any person who knowingly and willfully violates any provision of this [Act] for which a
20 penalty is not specifically provided is guilty of a [misdemeanor].

21 (b) Any person who knowingly and willfully makes a material, false statement in any
22 document filed or required to be filed under this [Act] with the intent to deceive the recipient of the
23 document is guilty of a [felony].

24 (c) Any person who knowingly and willfully engages in the business of money transmission
25 without a license shall be guilty of a [felony].

26 **Source:** Model Act Regulating Money Transmitters Section 25

27 **Reporter's Note:** During the initial drafting committee meeting, participants appeared to agree with these
28 provisions with respect to criminal liability.

29 **PART 11**

30 **HEARINGS**

31 **SECTION 1101. HEARINGS.**

32 (a) The [superintendent] may not suspend or revoke a license without holding a hearing. An
33 applicant whose license has been denied may also request a hearing. The [superintendent] shall give the
34 license or the applicant at least [ten (10)] days written notice of the time and place of those hearings by
35 registered or certified mail addressed to the licensee or applicant at its last known address. Any order of the

superintendent suspending, revoking or denying a license must state the grounds on which it is based and is not effective until [ten (10)] days written notice of the order has been sent by registered or certified mail to the licensee or applicant at its last known address.

(b) Hearings must be conducted in accordance with the []

Source: Model Money Transmitter Licensing and Regulation Act Section 12.

PART 12

DISCLOSURE OF LICENSEE RECORDS

SECTION 1201. CONFIDENTIALITY OF RECORDS.

(a) Except as otherwise provided in this [Act], the records of the [superintendent] relating to licensees are not public documents and are not open to inspection by the public. Neither the [superintendent] nor any member of the [superintendent]’s staff may disclose any information obtained in the discharge of his or her official duties to any person not connected with the [name of appropriate state department or regulatory agency].

(b) The [superintendent] may disclose confidential information pertaining to the licensee to the following persons:

(1) representatives of federal agencies insuring accounts of the licensee.

(2) representatives of federal or state agencies and foreign countries having regulatory or supervisory authority of the activities of the licensee if those representatives are permitted to and do, upon request of the [superintendent] disclose similar information respecting those [licensees] under their regulation or supervision or to those representatives who state in writing under oath that they shall maintain the confidentiality of that information.

(c) the attorney general of this state.

(d) to a federal, state or county grand jury in response to a lawful subpoena.

(e) to the [auditor general] of this state for the purposes of conducting audits authorized by law.

(f) The [superintendent] may:

(1) disclose the fact of a licensee's filing of an application with the [name of department] pursuant to this [Act]. give notice of a hearing, if any, regarding an application and announce his or her action on the application;

(2) disclose final decisions in connection with proceedings for the suspension or revocation of a license issued pursuant to this [Act].

(3) prepare and circulate reports reflecting the assets and liabilities of

(4) [licensees], including other information considered pertinent to the purpose of each report for general statistical information.

1 (g) Nothing in this section shall be construed to prevent the disclosure of information that is
2 admissible in evidence in a civil or criminal proceeding brought by or at the request of the [superintendent]
3 of this state to enforce or prosecute violations of this [Act] or the rules, regulations or orders issued or
4 promulgated pursuant to this [Act].

5 **Source:** Model Money Transmitter Licensing and Regulation Act Section 24.

6 **PART 13.**

7 **MISCELLANEOUS PROVISIONS.**

8 **SECTION 1301. APPOINTMENT OF [SUPERINTENDENT] AS AGENT FOR SERVICE**
9 **OF PROCESS.**

10 (a) A licensee, an authorized delegate or person who knowingly engages in business activities
11 that are regulated under this chapter without filing an application for a license is considered to have done
12 both of the following:

13 (1) consented to the jurisdiction of the courts of this state for all actions arising
14 under this [Act]

15 (2) appointed the [superintendent] as his or her lawful agent for the purpose of
16 accepting service of process in any action, suite or proceeding that may arise under this [Act].

17 (b) Within [] business days after service of process upon the [superintendent], the
18 [superintendent] shall transmit by certified mail copies of all lawful process accepted by the
19 [superintendent] as an agent to that person at its last known address. Service of process shall be considered
20 complete [] business days after the [superintendent] deposits the copies of the documents in the United
21 States mail.

22 **Source:**

23 **SECTION 1302. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

24 In applying and construing this [Act], consideration must be given to the need to promote
25 uniformity of law with respect to its subject matter among States that enact it.

26 **Source:**

27 **SECTION 1303. SEVERABILITY.**

28 If a provision of this [Act], or an application thereof to any person or circumstance, is held invalid,
29 the invalidity does not affect other provisions or applications of the [Act] that can be given effect without
30 the invalid provision or application, and to this end the provisions of this [Act] are several.

31 **Source:** Uniform Commercial Code Article 1 Draft Section 1-106.

32 **SECTION 1304. EFFECTIVE DATE.**

33 **Source:**

1 **SECTION 1305. SAVINGS AND TRANSITIONAL PROVISIONS.**
2 **Source:**