

D R A F T
FOR DISCUSSION ONLY

UNIFORM MONEY-SERVICES BUSINESS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTH YEAR
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UNIFORM MONEY-SERVICES BUSINESS ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM MONEY-SERVICES BUSINESS ACT

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UNIFORM MONEY-SERVICES BUSINESS ACT

PREFATORY NOTE

1. History and Background

A. Background on Money-Services Businesses

(i) What is a Money-Services Business?

Money-services businesses (“MSBs”) are non-bank entities that do not accept deposits like traditional banks or financial institutions. Rather, they provide alternative mechanisms for persons to make payments or to obtain currency or cash in exchange for payment instruments. MSBs engage in the following type of financial activities:

- money transmission (e.g., wire transfers);
- the sale of money orders and traveler’s checks (also referred to as the sale of payment instruments);
- check cashing; and
- foreign currency exchange.

MSBs have also been referred to as non-bank financial institutions (“NBFIs”) or nondepository providers of financial services (“NDPs”). The so-called “core” customers of MSBs are “unbanked” consumers, or persons that do not maintain formal relationships with banks/depository institutions. MSBs also are attractive to a growing range of customers because they offer a wide range of services under one roof (e.g., consumer financial services, travel-related services, postal and packaging services, etc). MSBs have often been associated with ethnic or immigrant communities in the United States as many of these communities use MSBs in order to send funds to relatives residing overseas. An MSB might be a large national company with offices and sales outlets nation-wide. An MSB might also be small business located in a corner shop in a local community.

As discussed below, The United States Department of the Treasury (“Treasury”) has recently proposed including issuers/sellers of stored value within the definition of MSBs. This is also mirrored by recent state legislative efforts, which have treated new currency substitutes such as stored-value cards and electronic traveler’s checks as “electronic payment instruments” subject to state regulation under existing money transmission statutes.

1 As of 1996, there were approximately 158,000 MSB outlets or sales
2 locations throughout the United States that provided financial services involving
3 approximately \$200 billion annually.¹ Approximately eight large entities account for
4 the majority of MSB activity conducted within the United States. This group is
5 comprised of large firms with significant capitalization that are publicly traded on
6 major securities exchanges. A far more numerous group of smaller enterprises
7 compete with the eight larger firms. A smaller MSB might also be a travel agent or
8 a grocery or liquor store. Smaller MSBs tend to operate in niche markets. For
9 example, smaller companies often service a particular immigrant neighborhood with
10 a certain metropolitan area.

11 (ii) Why have Various Types of MSBs been Grouped Together?

12 MSBs have been grouped together conceptually because (a) they provide an
13 interrelated group of services to the unbanked population and (b) the range of
14 services offered by MSBs have been identified as vulnerable to money laundering in
15 recent years. As depository institutions have come under increased federal and state
16 oversight with respect to money laundering, criminals have turned to MSBs as a
17 means for transporting illegally obtained money or converting large cash proceeds
18 into more easily portable payment instruments.²

19 The range of non-bank entities listed above were first grouped together with
20 the passage of the federal Annunzio-Wylie Anti-Money Laundering Act of 1992,
21 where the definition of “financial institution” for Bank Secrecy Act reporting
22 purposes was expanded to include non-banks.³ MSBs have also been grouped
23 together because many of these entities provide more than one of the services listed
24 above. A customer may need a range of services. For example, a customer may
25 take his paycheck to a check casher to have it converted into cash; he then may need

¹ Coopers & Lybrand, “Non Bank Financial Institutions: A Study of Five Sectors for the Financial Crimes Enforcement Network,” Final Report (February 1990), at 2.

² The term “money laundering” refers to the need for criminals to somehow disguise the source and origin of illegally obtained cash and to inject it into the legitimate stream of commerce.

³ The federal Bank Secrecy Act, codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951-1959 and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act, codified at 31 U.S.C. 5311-5330, appear at 31 C.F.R. Part 103.

1 to purchase a money order to pay his bills; finally, he may need to send funds to
2 relatives abroad via a wire transfer.

3 Most MSBs, however, have a primary function or business activity, from
4 which they derive the majority of their revenue (e.g., check cashing or money
5 transmission) but also offer secondary or ancillary services. Frequently, MSBs serve
6 as authorized vendors or sales agents of another MSB as well (with respect to a
7 secondary or ancillary activity). In particular, money transmitters and payment
8 instrument sellers often rely on a distribution network of sales outlets in order to
9 conduct their business. Very often check cashers or foreign currency exchangers
10 will serve as sales representatives for money transmitters. Consequently, check
11 cashers or currency exchangers will offer money transmission services or sell money
12 orders and traveler's checks solely as contractors for money transmitters. In these
13 notes and in the proposed Uniform Money-Services Business Act ("UMSBA") we
14 refer to the sales outlets as "authorized delegates". For the sake of consistency, we
15 will use the term "authorized delegate" in these notes when referring to the sales
16 outlets.

17 (iii) MSBs and Money Laundering

18 There has been a growing concern about the role of MSBs with respect to
19 money laundering. As banks have come under heightened regulation and
20 supervision with respect to money laundering, criminals have had to turn to other
21 types of financial institutions in order to transport their money easily and to convert
22 larger amounts of physical currency into smaller more portable payment instruments.
23 Of course, the majority of MSBs are law-abiding businesses that have compliance
24 programs and that cooperate with regulatory and law enforcement officials to
25 prevent and detect money laundering.

26 Customers often have different relationships with MSBs than customers do
27 with depository institutions. Typically, a customer has an ongoing relationship with
28 a financial institution at which it transacts business. This enables a bank to know its
29 customer and to identify a pattern or behavior that may suggest illegal activity. By
30 contrast, customers who utilize MSBs may do so because of the greater anonymity
31 such services provide. One does not need to be an existing "customer" of an MSB
32 as is the case with a bank. A customer can repeatedly use different MSBs to
33 transact business.

34 Additionally, MSBs are not always subject to the same level of licensing,
35 regulation and state oversight as are depository institutions. Money services are
36 provided a bit differently than financial services in depository institutions. Many
37 money transmitters and payment instrument sellers use networks of independent
38 sales outlets as the sites where business is transacted. These sales outlets are

1 operated under contract with a money transmitter and hence are not directly
2 supervised by the money transmitter. Thus, the role of the sales outlets with respect
3 to money laundering has come under heightened scrutiny. State oversight of these
4 sales outlets varies greatly, especially with respect to law enforcement.

5 Various studies have confirmed the increasing role of MSBs in money
6 laundering. As early as 1991, the Treasury and the Financial Action Task Force (an
7 intergovernmental task force) identified MSBs as vehicles for money laundering. A
8 1994 study conducted by the National Association of Attorneys General confirmed
9 that MSBs (in particular currency exchange houses) were utilized in the
10 Southwestern United States by drug traffickers who needed to transport and convert
11 large quantities of illegally-derived currency.

12 How do MSBs serve as vehicles for money laundering? In some instances
13 MSBs may assist clients to evade federally mandated reporting requirements with
14 respect to currency transactions in excess of a certain dollar amount. For example,
15 corrupt delegates of money transmitters might accept illicit funds from a customer
16 and then transfer the funds overseas in smaller amounts in order to evade certain
17 currency reporting requirements. As the Financial Crimes Enforcement Network
18 (“FinCEN”) of Treasury has noted:

19 Most often, the traffickers bring the agents [of money transmitters] large
20 amounts of currency which need to be returned to a drug source country. The
21 agents create invoices that make it appear as if the money had been brought in
22 by a number of different senders, in amounts below the recordkeeping and
23 reporting thresholds. These corrupt agents also provide the money transmitters
24 with lists of recipient names in the foreign countries for each remittance, again
25 using a different name for each remittance. In this way, each time it appears as if
26 there were a number of smaller, unrelated remittances instead of one remittance,
27 in excess of \$3,000, that would trigger the recordkeeping rules . . . or in excess
28 of \$10,000 which would trigger the filing of a Currency Transaction Report.⁴

29 In the fall of 1996, several east-coast money transmitters were indicted in a
30 federal sting operation for accepting funds that were allegedly drug proceeds. The
31 El Dorado Task Force (“Task Force”), formed in 1992, is a joint federal, state and
32 local effort involving the Federal Customs Service, the Internal Revenue Service, the
33 Secret Service, the New York Police Department, and the New York State Banking
34 Department. The Task Force targeted industries that facilitate money laundering.
35 In 1996, the Task Force monitored the activities of money transmitters in New York
36 City engaged in funds transfer to Colombia. Based on their investigations, the

⁴ See Special Currency Transaction Reporting Requirements for Money Transmitters, 62 Fed. Reg. 27,909 (May 21, 1997), at 27,912.

1 federal government was able to obtain the first ever guilty pleas from a licensed
2 money transmitter, Vigor Remittance Corporation, in July 1996.

3 The work of the Task Force also enabled the federal government to initiate a
4 geographic targeting order (“GTO”) against 22 money transmitters in New York
5 City and their 3,200 licensed delegates. Under federal law, the government can
6 require a group of financial institutions within a limited geographic range to comply
7 with special recordkeeping requirements upon a showing that there is a legitimate
8 need for the recordkeeping. The Task Force’s previous investigation proved a basis
9 for a GTO directed at transmitters involved in funds transfer to Colombia. In August
10 1996, a GTO was put in place requiring the 22 transmitters to report information
11 about cash transfers to Colombia greater than \$750. According to statements made
12 by Under Secretary of Treasury Raymond Kelly, the volume of money transferred to
13 Colombia has dropped by 30 percent as a result of the GTO. Many customers may
14 have stopped using the money transmitters to remit illegal funds because of the
15 heightened federal reporting and surveillance.

16 Additionally, MSBs serve as another “layer” in a chain of funds transfer. In
17 other words, a customer may use an MSB in order to mask his or her identity. A
18 currency exchange house, for example, might accept cash from a customer, which it
19 will then deposit in its own bank account at a commercial banking institution. The
20 origin or source of the funds would be “disguised” because the bank will attribute
21 ownership to the currency exchange business. Similarly, a wire transfer service may
22 accept funds from a customer and wire them through its own commercial bank for a
23 small commission. Again the source of funds is masked.

24 The use by money launderers of money orders, whether issued by the United
25 States Postal Service or by private companies, is also well documented. The ease
26 with which money orders can be redeemed or negotiated makes them attractive
27 tools for money launderers. Money orders are negotiable, may be made out to
28 “cash,” and operate as a cash substitute. Traveler’s checks also raise issues similar
29 to money orders. The requirement that traveler’s checks be countersigned on
30 issuance at the time they are negotiated makes them more difficult to abuse.
31 However, the counter-signature requirement can be evaded by a sales agent and may
32 have less force abroad than in the United States. Consequently, traveler’s checks
33 are often purchased in bulk and used to transport large amounts of illegal currency
34 overseas.

35 (iv) Existing State and Federal Regulation of MSBs

36 Federal and state regulators and law enforcement authorities have
37 traditionally relied on currency transaction reports (“CTRs”) as a means of detecting
38 money laundering in financial institutions and in MSBs. Pursuant to the Federal

1 Bank Secrecy Act (which is a federal anti-money laundering recordkeeping statute),
2 financial institutions are required to report currency transactions equal to or greater
3 than \$10,000 to Treasury. For example, if a bank customer deposits \$10,000 into
4 his or her bank account, the bank is obligated to file a CTR.⁵ The CTR indicates the
5 name of the depositor as well as the nature of the transaction (as a way of trying to
6 track down customers who may be money launderers). Additionally, financial
7 institutions are also required to retain records for transactions in excess of \$3,000.⁶

8 MSBs are technically obligated to file CTRs and to also keep records for
9 transactions greater than \$3,000. The lack of consistent and coherent federal and
10 state oversight of MSBs, however, makes it more difficult to enforce this obligation
11 and for regulators to act on information that they receive. Additionally, many
12 money launderers avoid triggering the CTR or recordkeeping requirements of the
13 Bank Secrecy Act by structuring their transactions into several smaller transactions
14 below the reporting thresholds of \$10,000 or \$3,000. As noted above, in some
15 instances, MSBs may actively assist the customer to evade reporting requirements
16 (as was the case with transmitters monitored under Operation El Dorado). Some
17 MSBs may be unaware, furthermore, that they possess such an affirmative
18 obligation. Also, unlike banks, which are licensed and regulated more closely at
19 either a state or a federal level, MSBs are subject to a varying degree of state
20 regulation (especially with respect to the role of authorized delegates).

21 At present, depository institutions are also required to file suspicious activity
22 reports (“SARs”) on transactions that suggest money laundering or other
23 illegal/fraudulent activity on the part of a customer. Unlike currency reporting
24 requirements, which are triggered by the dollar value of transactions, SARs are
25 designed to detect unusual patterns or activities that may involve money laundering
26 or financial crime. At present, MSBs are not obligated to complete SARs. Treasury
27 initiated proposed rulemaking in May 1997 that would create a SAR form for
28 money transmitters and payment instrument sellers. To date, however, these
29 proposed regulations have not been promulgated.⁷

⁵ 31 C.F.R. 103.22(a) imposes a general reporting and recordkeeping threshold of \$10,000 for domestic financial institutions.

⁶ 31 C.F.R. 103.33.

⁷ On May 21, 1997, FinCEN proposed rules on the following subjects: (1) registration of MSBs; (2) suspicious transaction reporting by money transmitters and issuers, sellers, and redeemers of money orders and traveler’s checks; and (3) currency transaction reporting by money transmitters of overseas transmissions of \$750 or more. To date, FinCEN has not promulgated the final MSB rules.

1 Direct oversight of MSBs occurs at the state level through state licensing
2 laws. State licensing, regulation and oversight of MSBs varies greatly from State to
3 State. The sale of payment instruments is the most heavily regulated activity with
4 more than 40 States having some form of law which regulates the sale of checks and
5 other payment instruments. Currency exchange is the least regulated with
6 approximately eight States having a form of regulation of this activity. The existing
7 state laws vary in terms of detail and the actual requirements imposed on MSBs, the
8 type of enforcement mechanisms and records available to regulators, and the nature
9 of penalties for non-compliance with relevant state laws. Some of the common
10 elements of existing state law include:

- 11 • licensing and registration of MSBs;
- 12 • requirements for both delegates of an MSB and the MSB itself flowing from
13 the relationship between the delegates and the MSB;
- 14 • bonding, collateral and net worth requirements;
- 15 • examination of MSBs;
- 16 • recordkeeping requirements;
- 17 • reporting requirements;
- 18 • enforcement powers; and
- 19 • civil and/or criminal penalties.

20 In 1994, Congress enacted the Money Laundering Suppression Act of 1994
21 (“MLSA”) (P.L. 103-225). The MLSA recommended that States enact uniform
22 laws to regulate MSBs. The MLSA urged States to enact uniform laws to “license
23 and regulate” MSBs including “businesses which provide check cashing, currency
24 exchange or money transmitting or remittance services, or issue or redeem money
25 orders, traveler’s checks and other similar instruments.” Congress specifically
26 requested that the States develop uniform legislation under the auspices of
27 NCCUSL or the American Law Institute. Congress recommended that a proposed
28 Uniform Act would include:

- 29 • licensing requirements for MSBs;
- 30 • licensing standards for MSBs that focus on:
31 R the business records and capital adequacy of the MSB; and

- 1 R the competence and experience of the directors and officers of the MSB;
- 2 • reporting requirements concerning disclosure of fees for services offered to
- 3 consumers;
- 4 • procedures to comply with federal currency transaction reporting
- 5 requirements; and
- 6 • criminal penalties for the operation of an MSB business without a license.

7 Section 407 of the MLSA also called for the States to enact civil or criminal

8 penalties for MSBs who fail to comply with the currency reporting requirements of

9 the federal Bank Secrecy Act.

10 **B. Conference Activities to Date**

11 Based on the recommendations contained in the MLSA, the National

12 Conference of Commissioners on Uniform State Laws (“NCCUSL” or

13 “Conference”) Committee on Scope and Program approved the creation of a study

14 committee (“Study Committee”) on January 7, 1995, to assess the need for a

15 Uniform Act on money-services businesses or MSBs. At the time that the Study

16 Committee was commissioned, MSBs were referred to as NDPs. Judge Willoughby

17 was appointed the Chairperson of the Study Committee.

18 The Study Committee solicited the views of state and federal regulators,

19 state prosecutors, and MSB industry associations as part of its review. The majority

20 of those who responded recommended that the Conference undertake such a

21 project. On July 16, 1996, the Executive Committee of the Conference approved a

22 drafting committee (“Drafting Committee”) for the creation of an Act (the “Act” or

23 “Proposed Act”) related to “nonbank and non-broker dealer providers of financial

24 services.” The Act was described as the Nondepository Providers of Financial

25 Services Act (“NDP Act”). The project was approved conditional upon the

26 Conference receiving outside funding for its work. At the Annual Meeting in San

27 Antonio, Texas, in October 1996, Conference President Bion Gregory appointed

28 Commissioner Tom Bolt, United States Virgin Islands, as Chair of the Drafting

29 Committee and Anita Ramasastry, Assistant Professor of Law, University of

30 Washington School of Law, as Reporter.

31 The Drafting Committee was asked to prepare a memorandum that

32 discussed the potential scope of a proposed Act and also the relationship between

33 MSBs and money laundering. Chairman Bolt submitted the memorandum to the

34 Executive Committee of the NCCUSL on January 13, 1997. In January 1997, the

35 Executive Committee approved of the scope of the Drafting Committee’s work with

1 respect to the Act. The Executive Committee noted that the Act was to be a state
2 anti-money laundering act that focused to the extent necessary on licensing of
3 MSBs. In January, the Drafting Committee submitted a proposed list of Observers
4 and Advisors to President Gregory. The list of Observers and Advisors was
5 formally approved and includes representatives from the federal government, state
6 regulatory bodies, state law enforcement, industry associations and academia.
7 Subsequent to the creation of a Drafting Committee, the Conference received a
8 commitment for funding from the Treasury.

9 The Drafting Committee has met four times. The Drafting Committee held
10 its first meeting in Washington D.C. in October 1997. At the initial meeting, the
11 Drafting Committee heard statements from regulators, industry representatives, and
12 other interested parties. On the basis of the oral testimony and a discussion and
13 review of existing state law and model legislative provisions, the Drafting
14 Committee prepared a first draft of the Act. The Drafting Committee discussed the
15 creation of a statute that would combine a basket of licensing, recordkeeping and
16 enforcement provisions as a means of MSB oversight and to achieve the prevention
17 and detection of money laundering. In essence, the Committee discussed the use of
18 a “safety and soundness” and licensing regime as a means for creating regulatory
19 oversight of both the entry and continued activities of MSBs within the States. The
20 first draft contemplated a unitary licensing system for all MSBs – including money
21 transmitters, payment instrument sellers, and check cashers, currency exchangers,
22 and sellers/issuers of stored value.

23 In March 1998, the Drafting Committee met in Baltimore, Maryland, and
24 reviewed the first draft of the Act. During the second meeting, it became evident
25 that the scope of the licensing provisions with respect to various types of MSBs
26 would have to be carefully considered. While MSBs are interrelated because they
27 offer linked services, each line of business does not pose the same type of safety and
28 soundness concerns.

29 During its second meeting, the Drafting Committee listened to commentary
30 from industry Observers on the subject of whether check cashers and currency
31 exchangers should be subject to the same type of licensing requirements as money
32 transmitters (which include payment instrument sellers and issuers/sellers of stored
33 value). The Committee determined that check cashers and currency exchangers did
34 not pose the same safety and soundness concerns as money transmitters and
35 therefore should not be subject to the same type of bonding, net worth and
36 permissible investment requirements that would be created for money transmitters.
37 The Committee decided to create a separate licensing system for check cashers and
38 currency exchangers.

1 The Drafting Committee also discussed the issue of stored value and
2 electronic currency. The consensus of the Committee was that these new forms of
3 currency substitutes should be included within the definition of MSB to the extent
4 that they are sold or issued by entities who are not subject to supervision by a
5 federal or state banking regulator. The definition of “stored value” and the
6 treatment of stored value and electronic currency under the Act is another issue on
7 which the Drafting Committee has continued to focus. The Drafting Committee has
8 requested input from academics, industry representatives, the American Bar
9 Association Task Force on Stored Value, and the Subcommittee on Electronic
10 Financial Services of the Committee of Law in Cyberspace to provide guidance on
11 stored value and related issues.

12 In October 1998, the Drafting Committee held its third meeting in Arlington,
13 Virginia. The Committee decided to create a separate licensing system for check
14 cashers and currency exchangers. The Committee made further refinements to its
15 licensing provisions. Specifically, check cashers and currency exchangers would
16 have to be licensed only if they were not authorized delegates/sales outlets for
17 money transmitters. The Act already requires a money transmitter to report the
18 identity of any check casher or currency exchanger who acts as a delegate to the
19 relevant state regulator. Check cashers or currency exchangers who serve as
20 delegates will therefore appear on the regulator’s “radar screen”.

21 The Drafting Committee voted to change the name of the Act from the
22 Nondepository Providers of Financial Services Act to the Money-Services Business
23 Act. The Drafting Committee recommended the name change because the
24 Committee felt that the term MSBs more aptly describes the group of organizations
25 that are to be regulated under the Act – namely money transmitters, payment
26 instrument sellers, stored-value providers, check cashers, and currency exchangers.
27 The Conference Executive Committee subsequently approved this name change in
28 January 1999 and designated the Act as the Uniform Money-Services Business Act
29 (“UMSBA”).

30 The other major issue that was discussed at the third meeting was the type of
31 “permissible” investments in which money transmitters would be allowed to invest.
32 Industry Observers discussed the types of investment categories that are typically
33 included in state statutes. The Drafting Committee raised concerns about the safety
34 or risk level of the some of the investments and decided to examine the issue further.

35 The Committee held its fourth meeting in March 1999 in Bethesda,
36 Maryland. At this meeting, the Committee further discussed the scope of the
37 licensing provisions and decided to create distinct and separate parts of the UMSBA
38 for licensing of check cashers and currency exchangers. By making the licensing
39 segments separate and easily divisible, States will be able to choose which licensing

provisions they wish to implement as part of an MSB licensing structure. Permissible investments were also discussed and the Drafting Committee decided upon a modified permissible investment provision in the UMSBA. The Reporter has subsequently prepared a fourth draft of the UMSBA for the Conference's Annual Meeting.

2. Citation and Style Notes

Unless otherwise noted, references in this draft are to the following sources:

- "Model Act Regulating Money Transmitters" – Non-Bank Funds Transmitter Group Model Act Regulating Money Transmitters.
- "Arizona Money Transmitter Act" – Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12, Transmitters of Money.
- "Florida Money Transmitter's Code" – Florida Money Transmitters' Code.
- "President's Commission Act" – President's Commission on Model State Drug Laws Model Money Transmitter Licensing and Regulation Act.
- "MTRA Outline" – Money Transmitters' Regulators Association Model Legislation Outline.

3. Goals and Objectives

Several major goals that the Act seeks to achieve are the following:

- encompassing all money-services businesses within a single legislative framework (keeping in mind the differences between various money-service business activities);
- providing a strong safety and soundness law that will provide regulators with a means of assessing whether a certain money-services business should be permitted to engage in business within a State (and ensuring consistent standards across the country);
- creating strong licensing mechanisms which will deter businesses that engage in money laundering and illegal activity from conducting business in a State;

- 1 • strengthening enforcement and supervisory powers that will permit
2 regulators and attorneys general to take appropriate action in the event of
3 suspected money laundering or other related violations of law; and
- 4 • including new means of money transmission such as stored value and
5 electronic currency within a statutory framework to the extent appropriate.
- 6 • reducing regulatory costs and eliminating duplicative costs for money
7 services businesses through the: (1) authorization of joint supervisory
8 examinations (among States) and (2) the coordination of Bank Secrecy Act
9 and suspicious transaction reporting between federal and state authorities.

10 There are many reasons why a Uniform Act is desirable. First, uniformity
11 will create a level playing field with respect to the entry of money services
12 businesses into various States. Uniform licensing, reporting and enforcement
13 provisions for money-services business will serve as a much large deterrent to
14 money laundering than will a host of varying state laws.

15 Additionally, while many States have laws that deal with the sale of payment
16 instruments, state regulation of money transmission, check cashers and currency
17 exchangers is extremely varied. Moreover, only a few States have attempted to
18 create statutory frameworks which tie together the various types of money services
19 businesses in a way that assists regulators and attorneys general in terms of law
20 enforcement and the prevention and detection of money laundering. Finally, the Act
21 provides a unique opportunity for States to take a consistent approach to the
22 licensing and regulation of stored value and other forms of emerging electronic
23 currency products. A uniform and consistent approach will provide less of a barrier
24 to competition and growth in these new sectors.

25 In some States, the Act will replace existing licensing laws for money
26 transmitters and potentially check cashers. For the vast majority of States, the Act
27 will provide new provisions for dealing with currency exchangers (which are
28 virtually unregulated at the state level). The Act is not designed, however, to repeal
29 existing consumer protection laws. To the extent that States have existing check
30 cashier law that merges licensing with regulation of consumer fees, the Act is
31 structured to allow States to choose which licensing provisions they wish to adopt.
32 Thus, a State could decide not to incorporate the check cashing provisions as part of
33 its new statutory framework. Alternatively, States might choose to use the Act as a
34 basic framework that it can supplement with additional consumer-related provisions.
35 A State might, for example, choose to supplement the Act's check cashing licensing
36 provisions, with its own requirements concerning consumer issues such as fee
37 disclosure and fee setting. For most States, the Act will provide a new approach to
38 the treatment of stored value and electronic currency at the state level.

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4. Principal Issues in the Draft

As noted above, three principal issues have evolved over the course of the Drafting Committee’s previous meetings: (1) the scope of the licensing provisions in the UMSBA; (2) the treatment of stored value within the UMSBA; and (3) the categories of permissible investments available to money transmitters.

A. Scope of the Licensing Provisions in the UMSBA

The UMSBA currently has two separate licensing regimes. The first is for money transmitters (consisting of money transmitters, payment instrument sellers, and certain types of stored-value providers). The second is for check cashers and currency exchangers.

As stated above, the UMSBA is a state safety and soundness law that creates licensing provisions for various types of MSBs. Licensing is potentially a crucial element in money laundering prevention. Proper licensing mechanisms will help States to identify MSB operations that may be operated for illegitimate purposes and to prevent them from conducting business in their States. Additionally, licensing is one method whereby States can monitor the operations of these businesses on an ongoing basis. Licensing will ensure better compliance with existing laws, especially if obligations are accompanied by appropriate enforcement mechanisms

The Drafting Committee is aware of the potential implementation problems that may be created by licensing requirements. State Banking Departments have frequently been the administrative bodies vested with MSB oversight. The Drafting Committee has attempted to keep regulatory burdens to a minimum and focused on the types of provisions that would bolster the state regulatory and enforcement mechanisms. There are, however, potential benefits to be gained from a uniform statute. Uniform law would simplify MSB compliance efforts with respect to transacting business in multiple jurisdictions. The diverse nature of state law makes compliance difficult for some MSBs. The UMSBA would also facilitate and enhance enforcement of existing money laundering and MSB provisions.

Because the UMSBA is a state licensing statute which also has safety and soundness elements, the Drafting Committee has considered the extent to which all MSBs should (or should not) be subject to the same requirements with respect to safety and soundness of the business entrants. Requirements related to capital adequacy, permissible investments, net worth and bonding are all tied to the safety and soundness of a business. The reason for the requirements is to prevent a business from becoming insolvent with customers having outstanding payment obligations (e.g., money orders that have not been redeemed).

1 The September 1998 Draft included a separate licensing regime for two
2 distinct groups of MSBs. The first group was money transmitters, payment
3 instrument sellers, and stored-value providers (these entities are still grouped
4 together but are labeled more broadly as “money transmitters” for ease of
5 definition). The second group was check cashers and currency exchangers. The
6 Drafting Committee concluded that check cashers and currency exchangers do not
7 pose the same type of safety and soundness concerns for state regulators as other
8 types of MSBs because they do not accept funds from consumers for obligations
9 that might remain unpaid. Rather, both check cashers and currency exchangers
10 immediately provide customers with funds as part of their services. Thus, there is
11 no risk that customers may lose their money (as with the purchase of a money order
12 that might not be redeemed on a future date). Therefore, the Drafting Committee
13 decided that check cashers and currency exchangers should be subject to different
14 types of reporting and recordkeeping requirements and should be exempt from bond
15 requirements.

16 Check cashers and currency exchangers were still included within the Act
17 (albeit in a different manner) because (1) there was some indication that the activity
18 of currency exchange itself (as contrasted to check cashing) is vulnerable to money
19 laundering; and (2) the role of many check cashers and currency exchangers as
20 authorized delegates of money transmitters means that they are potential vehicles for
21 money laundering with respect to money transmission and the sale of money orders
22 and traveler’s checks.

23 During the October 1998 Drafting Committee meeting, the Drafting
24 Committee voted to further narrow the extent to which check cashers and currency
25 exchangers are subject to licensing requirements. In the third draft, check cashers
26 and currency exchangers were required to obtain a license ONLY IF they were not
27 authorized delegates of money transmitters, payment instruments sellers, or stored-
28 value providers. Committee members observed that check cashers and currency
29 exchangers who act as authorized delegates would already be identified (for law
30 enforcement purposes) as part of the information supplied to the state regulator by
31 the principal licensee. Additionally, the UMSBA permits the state regulator to take
32 enforcement actions against both licensees and authorized delegates. Check cashers
33 and currency exchangers are subject to anti-money laundering provisions of the Act
34 if they are **either** (1) authorized delegates or (2) licensed separately under the
35 provisions for check cashers and currency exchangers.

36 The UMSBA does not deal with issues such as consumer rate and fee
37 regulation for check cashing. This is because the scope of the Act as approved by
38 Scope and Program concerns only safety and soundness as that relates to the
39 prevention of money laundering. The Drafting Committee was not directed to
40 address consumer issues. The UMSBA is not meant to replace or supplant existing

1 consumer protection laws relating to check cashing. Instead, the UMSBA is meant
2 to coexist with existing state consumer protection laws. Additionally, the licensing
3 provisions for check cashing are separable to the extent that States have existing
4 laws that combine licensing provisions with consumer protection provisions.

5 As the drafting process continues, the Drafting Committee will continue to
6 examine the scope of the separate licensing segments of the Act and also to refine
7 the requirements and obligations that flow from each of the separate licensing
8 sections.

9 **B. Treatment of Stored Value**

10 The Drafting Committee continues to focus on the issue of how new
11 payment technologies such as stored value should be treated within the UMSBA.

12 Stored-value products are a recent innovation in payment systems
13 technology. Stored-value products possess certain basic characteristics. According
14 to the Federal Reserve, stored-value products share three attributes: “(i) [a] card or
15 other device electronically stores or provides access to a specified amount of funds
16 selected by the holder of the device and available for making payments to others; (ii)
17 the device is the only means of routine access to the funds; and (iii) the issue does
18 not record the funds associated with the device as an account in the name of (or
19 credited to) the holder.”⁸

20 Stored-value cards are also known as “smart” cards, prepaid cards, or value-
21 added cards. These cards maintain on a computer chip a stored value of funds
22 available to be used by a person for various types of retail transactions. A balance is
23 recorded on the card which is debited at a point-of-sale terminal when a consumer
24 or individual makes a purchase. Typically, a consumer will pay a bank or other
25 provider money in exchange for a card that is loaded with value. The consumer uses
26 the card rather than paper currency to purchase good and services. Merchants who
27 accept smart cards can transfer the value of accumulated credits to their bank
28 accounts. A smart card is not typically used for transactions over the Internet.
29 Several new services, however, provide for remote payments to be made by
30 electronic currency that is stored on the hard drive of a person’s computer.

31 When discussing stored value, commentators refer to “closed” and “open”
32 systems. A closed system is one where the stored-value card can be used only for
33 goods and services provided directly by the card issuer. For example, a university

⁸ Board of Governors of the Federal Reserve System, Report to Congress on the Application of the Electronic Funds Transfer Act to Electronic Stored Value Products (March 1997), at 1.

1 may issue a stored-value card which students may use to purchase books, cafeteria
2 food, and fares on the university's bus system. An "open" system is one where the
3 issuer is not the provider of goods and services but is perhaps part of a group of
4 issuers whose stored-value cards are accepted as a form of payment by a host of
5 merchants.

6 The transfer of stored value may provide an opportunity for money
7 laundering. The amount of value that can be retained on a stored-value card will, of
8 course, affect whether people will use these products for money laundering. If one
9 can store a large amount of value on a card that is highly portable and transferable,
10 this will increase the likelihood of money laundering.⁹ Stored value and electronic
11 currency may give people the ability to move money globally without using banks as
12 intermediaries. Theoretically, funds can be transferred to jurisdictions with less
13 stringent money laundering laws via a stored-value instrument or over the computer.
14 A smart card encoded with a large amount of electronic money can be slipped into a
15 person's pocket and taken anywhere in the world.

16 Several States have begun to include stored value within their existing
17 money transmission law. Connecticut, for example, has defined stored value as a
18 form of "electronic payment instrument." This term would also include electronic
19 traveler's checks. Other States, such as Texas, have included stored-value providers
20 by interpretation. West Virginia defines "currency transmission" or "money
21 transmission" to include "the transmission of funds through the issuance and sale of
22 stored-value cards which are intended for general acceptance and use in commercial
23 or consumer transactions."¹⁰

⁹ The Financial Action Task Force, an intergovernmental body created initially by the G-7 nations, was formed to develop and promote policies to combat money laundering. In the annex to its 1996 annual report on Typologies of Money Laundering, which addressed "Issues Concerning New Payment Technologies," FATF states:

The physical bulk of cash has always presented problems to the money launderer; it is not uncommon for money to be abandoned simply because it could not be moved quickly enough. E-money reduces the need for currency smuggling. Instead of a single shipping container or many false-bottomed suitcases, vast amounts of money could be transmitted instantaneously and securely with a few keystrokes.

Annex at 7.

¹⁰ See WV ST. Section 32A-2-1(6).

1 At the October 1998 meeting, the Drafting Committee affirmed its decision
2 to include stored-value products and stored-value providers within the scope of the
3 Act. Drafting Committee members saw the use of stored value as a means of
4 payment as similar to money transmission. Therefore, to the extent possible, the
5 Drafting Committee recommended including stored value within existing definitions
6 of payment instruments. The Committee has made the following decisions with
7 respect to stored value:

- 8 • stored value is defined as a form of electronic payment instrument and thus
9 the sale of a stored-value instrument constitutes the sale of a payment
10 instrument for purposes of UMSBA;
- 11 • stored-value issuers, sellers and redeemers are treated as payment instrument
12 sellers; payment instrument sellers, in turn, are subsumed under the definition
13 of money transmitters, thereby triggering the Article 2 licensing provisions of
14 the UMSBA;
- 15 • closed-end stored-value instruments such as phone cards or metro cards are
16 not included within the definition of stored-value instrument; and
- 17 • stored-value issuers that are subject to supervision and oversight by a federal
18 or state banking agency are also exempt from the licensing provisions of the
19 Act.

20 The Drafting Committee has formed a subgroup comprised of Commissioners and
21 Observers to provide further recommendations on these issues.

22 In addition to stored value there are some electronic currency systems that
23 use the Internet as a means of transfer of payments. Some of these systems require
24 that an account be held by the customer at a financial institution through which the
25 value “clears” or is transferred. Other systems use digital value or tokens. A
26 customer purchases the tokens or values and then stores them on a computer for
27 future use. Stored-value cards are used primarily for point-of-sale transactions. A
28 Electronic value that is stored on a personal computer would be used for sales
29 where a buyer is at a location remote from the seller.

30 A customer may purchase electronic currency from a bank or other provider.
31 For example, a bank may issue digital “coins” that possess unique serial numbers
32 that identify a specific amount of monetary value. When the user requests his or her
33 electronic currency, the bank will debit his or her account and credit a cash liability
34 on the bank’s books. The user will then store the electronic coins on a computer. A
35 user will spend coins from the account by transferring the coin to a merchant.
36 Unlike physical delivery, delivery will occur via the computer. The merchant can

1 then send the coins back to the issuing bank for credit. While the Committee has
2 discussed electronic currency generally, the Committee has not specifically
3 addressed whether such transmissions of value over the Internet would constitute
4 money transmission. Existing electronic currency providers merely transmit
5 electronic “value” which is purchased with funds from a customer’s bank account or
6 charged to a credit card. In either case, there is a financial institution involved in the
7 purchase and redemption of the electronic value.

8 **5. Permissible Investments**

9 State money transmitter statutes include lists of “permissible” investments.
10 Money transmitters are required to maintain investments at all times that are equal
11 to the market value of the aggregate face amount of all funds transmitted and
12 outstanding payment instruments issued or sold by the money transmitter and all of
13 its authorized delegates. Typically, permissible investments have included the
14 following:

- 15 • cash;
- 16 • certificates of deposit of a financial institution (either domestic or foreign);
- 17 • banker’s acceptances eligible for purchase by member banks of the Federal
18 Reserve System;
- 19 • an investment bearing a rating of one of the highest grades as defined by a
20 nationally recognized rating service of such securities;
- 21 • investment securities that are obligations of the United States, its agencies or
22 instrumentalities, or investments in obligations that are guaranteed fully as to
23 principal and interest by the United States, or investments in any obligations
24 of any State, municipality, or any political subdivision thereof;
- 25 • shares in a money market mutual fund;
- 26 • a demand borrowing agreement or agreements made to a corporation or a
27 subsidiary of a corporation whose capital stock is listed on a national
28 exchange; and
- 29 • receivables that are due to a money transmitter from its authorized delegates
30 unless they are past due or doubtful of collection.

31 The Model Act Regulating Money Transmitters, the MTRA Model
32 Legislation Outline, and other state money transmitter statutes include lists similar to

1 the one described above, with minor variations. There are no caps or restrictions on
2 the amounts or percentage of overall permissible investments that a money
3 transmitter can make in any one category. For example, it would be possible under
4 many existing state statutes for a money transmitter to satisfy its permissible
5 investment requirements solely through demand borrowing agreements with a parent
6 or subsidiary corporation.

7 At the October 1998 drafting meeting, the Drafting Committee expressed
8 some concerns about the types of permissible investments that have been included in
9 model legislation as well as in existing state money transmission statutes. As stated
10 in this Prefatory Note, money transmitters have to maintain investments that are
11 equal to the aggregate face amount of all their outstanding funds transfers and
12 payment instrument obligations (on a dollar for dollar basis). The Drafting
13 Committee observed that certain investments appear more risky than others –
14 especially in the absence of any limitations or caps on percentage of the licensee’s
15 portfolio invested in any of these items.

16 At the October 1998 Drafting Committee meeting, Committee members
17 expressed disagreement with the list of permissible investments contained in the
18 second draft. The items that certain Committee members identified as posing a
19 higher risk were:

- 20 • shares in money market mutual funds, interest-bearing bills or notes or
21 bonds, debentures on stock traded on any national securities exchange or on
22 a national over-the-counter-market, or mutual funds primarily composed of
23 one or more investments of those items;
- 24 • demand borrowing agreements made to a corporation or a subsidiary of a
25 corporation whose capital stock is listed on a national exchange; and
- 26 • receivables that are due to a licensee from its authorized delegate pursuant to
27 a contract provided that they are not past due or doubtful of collection.

28 The Committee thought that the of restrictions on the amount that a money
29 transmitter could invest in any of these categories was problematic. Industry
30 Observers pointed out that these types of permissible investments were typically
31 contained in existing state law. The same Observers emphasized that it is important
32 for many licensees to have diverse portfolios, which include the type of investments
33 listed above.

34 With respect to the inclusion of receivables from delegates, industry
35 representatives explained that the inclusion had become a necessity due to the use of
36 automated money order dispensers. Typically, money orders are sold at sales

1 outlets through automated dispensers. The automated dispenser immediately
2 records the sale of the money order and notifies the money transmitter. This real-
3 time “notification” immediately triggers the obligation of a money transmitter to
4 retain permissible investments for the money order sold on a dollar for dollar basis.
5 However, while the obligation to maintain investments is triggered at the time of
6 sale, there is a lag of time until the sales outlet actually remits funds to the money
7 transmitter. For the time period between sale and remittance of the funds that the
8 sales outlet has received, the money transmitter needs to treat those “receivables” as
9 part of its permissible investment portfolio. Previously, authorized delegates had
10 notified a money transmitter of the number of money orders sold at the same time
11 that it remitted a check for the funds received.

12 The current version of the UMSBA reflects an attempt to impose some
13 restrictions on the type and quantity of permissible investment that a money
14 transmitter is allowed to make. The list of investments mirrors the list contained in
15 the second draft. The main difference, however, is that the current provisions in the
16 Act limit the aggregate amount of each of these contested categories of investments
17 to 20 percent of the licensee’s total permissible investments. Additionally, a licensee
18 may not invest in more than 10 percent of any one entity whose investments fall into
19 these categories. The revised section on permissible investments is an attempt to
20 balance the concerns about the safety of the investments made by licensees with the
21 needs of money services businesses to have diverse investment opportunities and to
22 include receivables among the categories permitted.

1 **UNIFORM MONEY-SERVICES BUSINESS ACT**

2 **ARTICLE 1**
3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Uniform
5 Money-Services Business Act.

6 **SECTION 102. DEFINITIONS.** In this [Act]:

7 (1) “Applicant” means a person filing an application for a license under this
8 [Act].

9 (2) “Authorized delegate” means a person designated by a licensee to
10 engage in a money-services business on behalf of the licensee.

11 (3) “Check casher” means a person that engages in the business of check
12 cashing and receives at least \$500 compensation for check cashing during any
13 30-day period.

14 (4) “Check cashing” means accepting a payment instrument in exchange for
15 money delivered to a presenter at the time and place of the presentation.

16 (5) “Control” means:
17 (A) ownership, control of, or the power to vote, directly or indirectly, 25
18 percent or more of a class of voting securities or voting interests of a licensee or
19 controlling person;

1 (B) controlling the election of a majority of directors, managers, trustees,
2 or other persons exercising managerial authority of a licensee or controlling person;
3 or

4 (C) direct or indirect exercise of a controlling influence over a licensee or
5 controlling person, if the [superintendent], after notice and opportunity for hearing,
6 so determines.

7 (6) “Controlling person” means a person having control.

8 (7) “Currency” means the coin and paper money of the United States, or of
9 a foreign government, which is designated as legal tender and which circulates and is
10 customarily used and accepted as a medium of exchange in the country. The term
11 includes coin and paper money or a monetary unit of account established by an
12 intergovernmental organization or by agreement between two or more governments
13 which is customarily used and accepted as a medium of exchange in more than one
14 country.

15 (8) “Currency exchange” means exchanging money of one government for
16 money of another government.

17 (9) “Engage in the business” means engage for compensation more than 10
18 times in any calendar year in activities regulated under this [Act].

19 (10) “Executive officer” means a licensee’s president, chairman of the
20 executive committee, chief financial officer, responsible individual, or other
21 individual that performs similar functions.

1 (11) “Financial institution” means a bank, credit union, savings and loan
2 association, or other similar institution.

3 (12) “Key shareholder” means a person or group of persons, acting in
4 concert, that owns 25 percent or more of a voting class of the securities or of the
5 voting interest of an applicant or licensee.

6 (13) “Licensee” means a person licensed under this [Act].

7 (14) “Limited station” means a private premises where a check casher is
8 authorized to engage in the business of check cashing solely for the employees of
9 the particular employer or group of employers specified in its license application, for
10 no more than two days of each week.

11 (15) “Material litigation” means litigation that, according to generally
12 accepted accounting principles, is considered significant to an applicant’s or
13 licensee’s financial condition.

14 (16) “Mobile location” means a vehicle or a movable facility where check
15 cashing occurs.

16 (17) “Money” means a medium of exchange that is authorized or adopted
17 by a domestic or foreign government. The term includes a monetary unit of account
18 established by an intergovernmental organization or by agreement between two or
19 more governments.

20 (18) “Money-services business” means a person that is licensed under this
21 [Act] or engages in the business of money transmission, check cashing, or currency
22 exchange.

1 (19) “Money transmission” means the sale or issuance of a payment
2 instrument, or engaging in the business of receiving money for transmission, or the
3 business of transmitting money within the United States or to locations outside the
4 United States, by any means including transmission by payment instrument, wire,
5 facsimile, and electronic transfer.

6 (20) “Outstanding,” with respect to a payment instrument, means a payment
7 instrument issued by a licensee, which has been sold directly by the licensee; issued
8 by a licensee, which has been sold by an authorized delegate of the licensee; or
9 which has been reported to a licensee as having been sold but not yet paid by or for
10 the licensee.

11 (21) “Payment instrument” means a check, draft, money order, traveler’s
12 check in record form, stored-value instrument, or other instrument for the
13 transmission or payment of money, whether or not negotiable, and in record form.
14 The term does not include a credit card voucher, letter of credit, or instrument that
15 is redeemable by the issuer in goods or services.

16 (22) “Person” means an individual, corporation, business trust, estate, trust,
17 partnership, limited liability company, association, joint venture, or any other legal
18 or commercial entity. The term does not include a government, governmental
19 subdivision, agency, or instrumentality, or public corporation.

20 (23) “Record” means information that is inscribed on a tangible medium or
21 that is stored in an electronic or other medium and is retrievable in perceivable form.

1 (24) “Remit” means to make direct payment of moneys to a licensee or its
2 representative authorized to receive the moneys or to deposit moneys in a financial
3 institution in an account specified by the licensee.

4 (25) “Responsible individual” means an individual who is employed by a
5 licensee and has principal active managerial authority over the money-services
6 business of the licensee in this State.

7 (26) “State” means a State of the United States, the District of Columbia,
8 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
9 subject to the jurisdiction of the United States.

10 (27) “Stored-value instrument” means a card or other tangible object for the
11 transmission or payment of money or other value which contains a microprocessor
12 chip, magnetic stripe, or other means for the storage of information, which is
13 prefunded, and for which the value is decreased upon each use. The term does not
14 include a card or other tangible object that is redeemable by the issuer in the issuer’s
15 goods and services.

16 (28) “[Superintendent]” means the [state superintendent of banks or other
17 senior state regulator charged with the regulation of money-services businesses].

18 (29) “Traveler’s check” means an instrument identified as a traveler’s check
19 on its face or commonly recognized as a traveler’s check and issued in a specified
20 denomination of currency with a provision for a specimen signature of the purchaser
21 to be completed at the time of purchase and a countersignature of the purchaser to
22 be completed at the time of negotiation.

(30) “Unsafe or unsound practice” means a practice or conduct that is contrary to generally accepted standards applicable to a money transmitter, or that is a violation of an order of the [superintendent] against a money transmitter if the practice, conduct, or violation creates the likelihood of material loss, insolvency, or dissipation of assets of the money-services business, or otherwise materially prejudices the interests of its customers.

Sources: Definitions in this Act have been mainly derived from the Model Act Regulating Money Transmitters, the President’s Commission Act, the Arizona Code, and the Florida Money Transmitter’s Code. Several definitions are new.

Reporter's Note

1. “Authorized delegate.” The ability of a state superintendent to regulate the conduct of authorized delegates is of vital importance to the prevention and detection of money laundering. It is important, therefore, to clearly define the outlets through which a money-services business, primarily a money transmitter, conducts its business. The term “authorized delegate” was selected rather than “agent” to avoid confusion as to the nature of the legal relationship between a money transmitter and the sales outlets through which it transacts business. Sales outlets provide money transmission on behalf of a money transmitter on a contractual basis. Although the delegates are not defined as “agents” of a money transmitter, there are circumstances under which the superintendent may take enforcement action against a licensed money transmitter on the basis of actions of its delegates. The Act does impose some statutory obligations on the licensee with respect to the conduct of its delegates. Additionally, the superintendent has the authority to take action directly against the delegate as well. See Section 801.

2. “Check cashing.” The definition of check cashing excludes businesses that may offer a small amount of check cashing services incidental to their primary business. Hotels, for example, which cash checks as a courtesy for their guests, fall into the excluded category. This definition was agreed upon at the October 1998 drafting meeting. The main difference in the new definition (as compared with many existing state definitions) is the method used to determine which businesses should be excluded because they cash checks as a service that is incidental to their primary business and which is also at a de minimis level. The exemption reflects an aggregate level of fees over a 30-day period, rather than relying on a daily level of business.

1 3. “Control.” The definition of control is derived from the definition
2 contained in the Federal Bank Holding Company Act, 12 U.S.C. Section
3 1842(a)(2). It was decided that the definition of control included in the September
4 1998 draft was too formalistic in that it required a bright line threshold of 25 percent
5 or more ownership to trigger control. The Drafting Committee decided that the
6 Federal Bank Holding Company Act provided a useful definition that did not relate
7 solely to a threshold of share ownership. The current definition is more flexible and
8 allows for a broader interpretation of the concept of control.

9 4. “Engage in the business.” Because the Act is intended to apply only to
10 those entities engaged in the money-services business as a commercial enterprise,
11 the current definition was added. The definition of engage in the business is a
12 modified version of the definition of “conduct the business” included in the
13 President’s Commission on Model State Drug Laws, Model Money Transmitter
14 Licensing and Regulation Act (“President’s Commission Act”) Section 4(c); and the
15 President’s Commission on Model State Drug Laws, Model Financial Transaction
16 Reporting Act Section 4(d). The commentary to the President’s Commission Act
17 states that “[c]onduct the business’ derives its meaning from federal tax law relating
18 to deductions available to persons in the business of various profit-seeking pursuits.
19 Its application to federal gambling law, 18 U.S.C. 1955, provides useful case law
20 examples.”

21 5. “Limited station.” This definition refers to sites where check-cashing
22 services are solely offered to employees of one or several employers. Specifically,
23 employers have arranged with a check casher to provide check cashing in
24 connection with payroll checks. It was necessary to define this type of location
25 because check casher licensees are required to list all of their locations (including
26 limited stations) on their license application and their renewal reports.

27 6. “Mobile location.” Mobile locations are movable locations (normally
28 motor vehicles such as vans) from which check cashing or currency-exchange
29 services are provided to members of the public. This term is defined because check
30 casher and currency exchanger licensees are required to report these locations on
31 their license applications and subsequent renewal reports.

32 7. “Money-services business.” As explained in the Prefatory Note, money-
33 services business is used to define a group of entities that engage in any of the
34 following activities: money transmission, sale of payment instruments (i.e., money
35 orders or traveler’s checks or stored-value instruments), check cashing and currency
36 exchange. The definition focuses on the activities engaged in rather than the entity
37 that engages in the activities. The Drafting Committee decided to use an activity-
38 based definition because different money-services businesses may engage in one or
39 more of these money-services business activities.

1 8. “Money transmission.” Money transmission subsumes several activities
2 or functions: the transmission of funds as well as the sale or issuance of payment
3 instruments and the sale or issuance of stored-value instruments. Stored-value
4 instruments, as defined in the Act, are treated as payment instruments. The
5 grouping of funds transmission and the sale or issuance of payment instruments is
6 consistent with existing state practice. The Drafting Committee has consolidated
7 related functions to simplify the Act.

8 9. “Payment instrument.” At the October 1998 meeting, the Drafting
9 Committee affirmed its decision to include stored-value products and stored-value
10 providers within the scope of the Act. Drafting Committee members determined
11 that the use of stored value as a means of payment was similar to money
12 transmission as a process. Therefore, to the extent possible, the Drafting Committee
13 included stored value within existing definitions of money-services businesses. The
14 Act follows the Connecticut approach and treats stored-value instruments (including
15 electronic traveler’s checks) as payment instruments.

16 10. “Stored-value instrument.” At the October 1998 drafting meeting, the
17 Committee decided that stored-value providers should be required to obtain licenses
18 under the Act. At present, stored-value instruments are encompassed within the
19 definition of payment instruments. In 1998, Connecticut enacted the Act
20 Concerning Electronic Payment Instruments and Currency and Foreign Transactions
21 Reporting. The Connecticut statute amended existing money-transmission law so
22 those stored-value products (referred to as “electronic payment instruments”) are
23 treated as payment instruments. Furthermore, issuers of such payment instruments
24 are subject to licensing and regulation in Connecticut. See CT. Legis. 98-192, cited
25 in 1998 Conn. Legis. Serv. P.A. 98-192 (S.S.B. 230) (West 1998). The Committee
26 will continue to review the definition of “stored value” in the Act. For example,
27 there have been suggestions that such a payment substitute should not be defined in
28 relation to an instrument but more broadly in terms of the actual concept of its
29 “value.”

30 11. “Unsafe or unsound practice.” Under the Act, the superintendent
31 possesses the authority to take action against a money transmitter or its authorized
32 delegates in the event that the money transmitter engages in an unsafe or unsound
33 practice. The term unsafe and unsound is a general concept that has been used in
34 state and federal banking and financial law. Unsafe and unsound practices are ones
35 that may pose financial risk to a financial institution. The Act provides a definition
36 of unsafe and unsound that applies solely to money transmitters. Money
37 transmitters who engage in unsafe or unsound activity may leave consumers with
38 unredeemed money orders or uncollected funds transfers. The superintendent is
39 able to take protective action in the event than a money transmitter engages in an

unsafe or unsound activity. This prevents the dissipation of licensee assets that should be used to fulfill obligations to customers.

The Drafting Committee determined that unsafe and unsound practices related solely to the risk of financial loss posed by the actions of the money transmitter. Currency exchangers and check cashers do not engage in an unsafe or unsound practice with respect to their check cashing or currency exchange activity because they provide their customers with funds immediately. To the extent that a check casher or currency exchanger dissipates its assets or becomes insolvent, it will typically have to cease business. However, this will not directly harm consumers, as they will not be left with unpaid obligations. Furthermore, if a check casher or currency exchanger engages in an unsafe activity with respect to money transmission this will not have any direct impact on or harm to individual consumers. This is because the check casher may only conduct money transmission as an authorized delegate. The money transmitter will remain liable to the holders of its money orders, even if an authorized delegate sells them. Because the money transmitter bears ultimate financial responsibility to customers, check cashers and currency exchangers are not considered to engage in unsafe or unsound practices.

SECTION 103. SUPERVISORY POWERS OF [SUPERINTENDENT].

Consistent with this [Act] the [superintendent] shall adopt rules pursuant to the [administrative procedure act] necessary to achieve the purposes of this [Act].

Source: New

Reporter's Note

The State Superintendent for Banking or Banking Commissioner is usually the state regulator that supervises and regulates money-services businesses.

SECTION 104. EXCLUSIONS. This [Act] does not apply to:

- (1) the United States or a department, agency, or instrumentality thereof;
- (2) the United States Postal Service;
- (3) a State or a governmental subdivision, agency, or instrumentality thereof;

1 (4) a bank, bank holding company, thrift company, credit union, building and
2 loan association, savings and loan association, savings bank, mutual bank, an office
3 of an international banking corporation, a branch of a foreign bank, a corporation
4 organized pursuant to the Bank Services Act, or an Edge Act Agreement
5 Corporation organized under the laws of a State or the United States if the person
6 does not issue, sell, or provide payment instruments through an authorized delegate
7 that is not such a person;

8 (5) electronic funds transfer of government benefits for a federal, state,
9 [county], or governmental agency by a contractor on behalf of the United States or
10 a department, agency, or instrumentality thereof, or a State or governmental
11 subdivision, agency, or instrumentality thereof;

12 (6) a board of trade designated as a contract market under the Commodity
13 Exchange Act or a person that provides in the ordinary course of business clearance
14 and settlement services for a board of trade to the extent of its operation as such a
15 board of trade or for such a board of trade;

16 (7) a person registered as a futures commission merchant under the federal
17 commodities laws to the extent of its operation as such a merchant;

18 (8) a person that provides clearance or settlement services pursuant to a
19 registration as a clearing agency or an exemption from such registration granted
20 under the federal securities laws to the extent of its operation as such a provider;

21 (9) an operator of a payment system which provides processing, clearing, or
22 settlement services, between or among persons excluded by this section or licensees,

1 in connection with wire transfers, credit-card transactions, debit-card transactions,
2 transactions involving stored-value instruments, automated clearing house transfers,
3 or similar funds transfers to the extent of its operation as such an operator;

4 (10) a person registered as a securities broker-dealer under the federal
5 securities laws to the extent of its operation as such a broker-dealer; or

6 (11) a person engaging in the business of issuing, selling, or redeeming
7 stored-value instruments subject to regulation, supervision, and examination by a
8 federal or state banking agency which does not issue, sell, or redeem stored-value
9 instruments to or from individuals.

10 **Source:** President's Commission Act Section 6 (with several modifications and
11 additions).

12 **Reporter's Note**

13 1. Exemptions are provided liberally to reduce the cost of the Act to a
14 minimum both in terms of administration and in terms of regulation. This list should
15 be modified to match a State's existing regulatory categories and terminology as
16 appropriate. The entities listed in paragraphs (1) through (5) are exclusions
17 normally included in relevant state licensing statutes for money transmitters.

18 2. Many of the new exclusions apply to organizations that provide clearing
19 and settlement services (which do involve the transmission of money). Clearing and
20 settlement often involves the transfer of funds from one bank account to another
21 (e.g., the debiting and crediting of accounts of various participants in a trading
22 system or credit card consortium) where funds are transferred from bank accounts
23 of a participant's financial institution. The clearing and settlement organizations
24 listed in the exemptions are already subject to supervision by other federal or other
25 state regulators.

26 3. The proposed exclusion involving boards of trade was submitted to the
27 Financial Crimes Enforcement Network of the United States Department of
28 Treasury by various clearing organizations that collectively represent several of the
29 largest commodity exchanges and commodities/options clearing organizations. In a
30 letter dated October 8, 1997, these organizations recommended that FinCEN change
31 the proposed definition of money-services business to exclude regulated entities that

1 are already subject to regulation by the U.S. Securities and Exchange Commission
2 and the U.S. Commodities and Futures Trading Commission.

3 4. The proposed exclusion for broker-dealers arises from the fact that
4 broker-dealers are already subject to Bank Secrecy Act Reporting requirements and
5 are highly regulated by the U.S. Securities and Exchange Commission.

6 5. The proposed exclusion for stored-value issuers, sellers or redeemers
7 relates only to those entities that are subject to oversight by a federal or state
8 banking agency and that do not issue, sell or redeem stored value directly to
9 individuals. Such entities would already be regulated from a safety and soundness
10 standpoint by banking agencies and would not have direct obligations to individuals.
11 Instead, such entities would sell stored value on a wholesale basis to other
12 institutions.

13 **SECTION 105. LICENSE REQUIRED.**

14 (a) A person may not engage in a money-services business without:

15 (1) first obtaining a license under this [Act]; or

16 (2) becoming an authorized delegate with respect to that business.

17 (b) A person that is not licensed under this [Act] and is not an authorized
18 delegate of a licensee is engaged in a money-services business if the person
19 advertises, solicits, or holds itself out as a money-services business or engages in the
20 business.

21 (c) A person that engages in a money-services business only as an
22 authorized delegate of a licensee and acts solely within the scope of a contract
23 between the authorized delegate and the licensee is not required to be licensed under
24 [Article] 2, 3, or 4.

25 (d) A license is not transferable or assignable except as otherwise provided
26 by the [superintendent].

Source: Model Act Regulating Money Transmitters Section 2 combined with President’s Commission Act Section 5. The restrictions on transfer or assignment of a license come from California Financial Code Section 12219, which prohibits the transfer of check selling licenses.

Reporter's Note

This section sets forth the overall licensing structure for money-services businesses created by the Act. All money-services businesses (including money transmitters as broadly defined, check cashers and currency exchangers) must either obtain a license or become an authorized delegate with respect to the type of money-service business it wishes to perform. Additionally, should a money-services business have neither a license nor status as an authorized delegate, the person is treated, for purposes of the Act, as if it is engaging in money-services business on its own behalf.

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ARTICLE 2
LICENSING OF MONEY TRANSMITTERS

SECTION 201. APPLICATION FOR LICENSE.

(a) A person may not engage in the business of money transmission, or advertise the person’s engagement in money transmission without first obtaining a license under this [article].

(b) A person licensed under this [article] may also engage in check cashing without obtaining a separate license under [Article] 3 and currency exchange without obtaining a separate license under [Article] 4.

(c) A person applying for a license under this [article] must do so in writing, under oath, and in a form prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in the conduct of its business;

(2) the applicant’s material litigation for the last five years;

(3) a description of any money-services business previously or presently engaged in by the applicant, and the business in which the applicant seeks to engage in this State;

(4) a list of the applicant’s proposed authorized delegates, and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or other money-services business;

1 (5) a sample form of contract for authorized delegates, if applicable, and
2 a sample form of payment instrument, if applicable;

3 (6) the name and address of any clearing financial institutions through
4 which the applicant's payment instruments will be payable;

5 (7) a document confirming that the requirements for security and net
6 worth as set forth in Sections 202 and 206 have been or will be satisfied; and

7 (8) other information the [superintendent] reasonably requires with
8 respect to the applicant.

9 (d) If an applicant is a corporation, the applicant shall also provide:

10 (1) the date of the applicant's incorporation and State or country of
11 incorporation;

12 (2) a certificate of good standing from the State or country in which the
13 applicant is incorporated;

14 (3) a description of the corporate structure of the applicant, including
15 any parent or subsidiary of the applicant, and whether any parent or subsidiary is
16 publicly traded on a securities exchange;

17 (4) the legal and any fictitious name, business and residential addresses,
18 and employment, for the past five years, of each executive officer, director, and key
19 shareholder of the applicant;

20 (5) material litigation and criminal convictions for the past five years of
21 each executive officer and key shareholder of the applicant;

1 (6) a copy of the applicant’s audited financial statements for the current
2 year and, if available, for the next preceding two years;

3 (7) a copy of the applicant’s unconsolidated financial statements for the
4 current year, whether audited or not, and, if available, for the next preceding two
5 years;

6 (8) if the applicant is a publicly traded corporation, copies of all filings
7 made with the United States Securities and Exchange Commission within the year
8 next preceding the date of the filing of the application; and

9 (9) other information the [superintendent] reasonably requires.

10 (e) If the applicant is not a corporation, the applicant shall also provide:

11 (1) evidence that the applicant is qualified to do business in this State;

12 (2) the legal and any fictitious name, business and residential addresses,
13 personal financial statements, and employment for the last five years, for each
14 controlling person that is an individual and each responsible individual of the
15 applicant;

16 (3) material litigation and criminal convictions, for the last five years, of
17 each controlling person that is an individual and each responsible individual of the
18 applicant;

19 (4) a copy of the applicant’s audited financial statements for the current
20 year, and, if available, for the next preceding two years; and

21 (5) other information the [superintendent] reasonably requires.

(f) The [superintendent] may waive a requirement of this section or permit an applicant to submit substituted information in lieu of the required information.

Source: Arizona Money Transmitter Law Section 6-1203; President's Commission Act Section 7; Florida Money Transmitters' Code Section 560.205.

Reporter's Note

At the February 1998 drafting meeting, the Drafting Committee decided to create separate licensing provisions for money transmitters (which includes payment instrument sellers and stored-value issuers and sellers) as distinct from check cashers and currency exchangers. It was determined that check cashers and currency exchangers posed less safety and soundness concerns because customers who exchanged currency or cashed checks were provided with cash immediately.

As set forth in Articles 2, 3, and 4, separate licensing requirements are established for money transmitters and for check cashers/foreign currency exchangers. The superintendent's supervisory and enforcement powers, however, are the same for all money-services businesses. The licensing requirement promotes one of the main goals of the Act: to create an appropriate regulatory framework to deter and eliminate the use of money-services businesses as potential vehicles for money laundering. Only a handful of States have attempted to create a framework that links all money-services businesses together within a statute, while recognizing the differences inherent in the various activities concerned. Florida and Arizona, for example, are two States that have enacted statutes that have uniform enforcement and penalty provisions for all money-services businesses, while retaining separate licensing and recordkeeping provisions for each type of money-service activity. The Drafting Committee chose this approach because, for law enforcement purposes, the state superintendent and the Attorney General need general enforcement powers with respect to each of the different entities as a means of prevention and detection of money laundering. Therefore, the Act contains uniform enforcement provisions and different licensing requirements for each type of activity.

The licensing application is the first point at which the State may protect the public by prohibiting entry by those persons that would bring discredit on the industry, and the first source of information for investigators and regulators in the event that there is future misconduct by a licensee. The information requested from money-transmitter applicants in Section 201 is the type of information recommended by the Money Transmitters Regulators' Association in Section IV of the Model Legislation Outline and also in the Model Act Regulating Money Transmitters. The information concerning criminal convictions and employment histories, as well as the identity of executive officers, key shareholders, controlling persons and responsible individuals is designed to assist the superintendent in determining whether the

1 license applicant is a reputable business or whether there are any suggestions that
2 the business might be used for illegal purposes. Additionally, information relating to
3 the applicant's financial position (including information about net worth) is
4 necessary in order to determine whether an applicant will be able to meet its
5 obligations with respect to any obligations it might have (in connection with the sale
6 of money orders, traveler's checks and stored value and funds transfer).

7 **SECTION 202. SECURITY.**

8 (a) A surety bond, irrevocable letter of credit, or other similar security
9 acceptable to the [superintendent], in the amount of [\$50,000] must accompany an
10 application for a license.

11 (b) If an applicant proposes to engage in the business at more than one
12 location through authorized delegates or otherwise, the amount of the security is
13 increased by [\$10,000] per location, not exceeding a total increase of [\$250,000].
14 The [superintendent] may, however, increase the amount of security required to a
15 maximum of [\$500,000] upon the basis of the impaired financial condition of a
16 licensee, as evidenced by net worth reduction, financial losses, or other relevant
17 criteria.

18 (c) A security must be in a form satisfactory to the [superintendent] and run
19 to the State for the benefit of any claimant against the licensee to secure the faithful
20 performance of the obligations of the licensee with respect to money transmission.

21 (d) The aggregate liability on a surety bond may not exceed the principal
22 sum of the bond. A claimant against a licensee may maintain an action directly on
23 the bond or the [superintendent] may maintain an action on behalf of the claimant.
24 The bond must be payable to any person injured by a wrongful act, omission,

1 default, fraud, or misrepresentation of a licensee or an authorized delegate or
2 employee of the licensee in the conduct of its business as a licensee or to the State
3 for the benefit of the [superintendent] and of the injured person. Only one bond is
4 required of a licensee irrespective of the number of executive officers, directors,
5 locations, employees, or authorized delegates of the licensee.

6 (e) An irrevocable letter of credit must run to the State, for the benefit of
7 the [superintendent] and any person injured by a wrongful act, omission, default,
8 fraud, or misrepresentation of a licensee or an authorized delegate or employee of
9 the licensee in the conduct of its business as a licensee. An irrevocable letter of
10 credit may be drawn upon by sight drafts in amounts determined by the
11 [superintendent] up to the aggregate amount of the irrevocable letter of credit.

12 (f) A security must remain in effect until cancellation, which may occur only
13 after 30 days' written notice to the [superintendent] of the intended cancellation.

14 (g) A security must remain effective for as long as the [superintendent]
15 specifies but at least five years after the licensee ceases to be a money-services
16 business in this State. However, the [superintendent] may permit the amount of
17 security to be reduced or eliminated before that time to the extent that the amount of
18 the licensee's payment instruments outstanding in this State is reduced. The
19 [superintendent] may permit a licensee to substitute another form of security
20 acceptable to the [superintendent] for the security effective at the time the licensee
21 ceases to be a money-services business in this State.

1 (h) In lieu of the security prescribed in this section, an applicant for a license
2 or a licensee may deposit with the [superintendent] cash, or alternatives to cash
3 acceptable to the [superintendent], in the amount of the required security. The
4 principal amount of the deposit may be released to the applicant for a license or
5 licensee only upon authorization in a record of the [superintendent] or on the order
6 of a court of competent jurisdiction.

7 **Source:** Arizona Revised Statutes, Title 6, Banks and Financial Institutions,
8 Chapter 12 Transmitters of Money; A.R.S. Section 6-1205; President's Commission
9 Act Section 8.

10 **Reporter's Note**

11 The bond and net worth requirements are safety and soundness measures
12 designed to protect the public, but also to deter companies that have questionable
13 solvency or business practices from entering the market. The bond requirement
14 serves as a barrier to entry for financially unstable companies. Alternatives to the
15 bond requirement, however, are provided in the form of cash or letters of credit.
16 Licensees may also be permitted to deposit specified liquid assets in the amount of
17 the bond. The Drafting Committee has attempted a balance between the goals of
18 safety and soundness and of providing open access to businesses that wish to enter
19 the money transmission market, recognizing that decisions as to the final dollar
20 amounts will need to reflect the particular fiscal needs and concerns of different
21 States.

22 **SECTION 203. ISSUANCE OF LICENSE.**

23 (a) Upon the filing of an application under this [article], the [superintendent]
24 shall investigate the applicant's financial condition and responsibility, financial and
25 business experience, character, and general fitness. The [superintendent] may
26 conduct an on-site investigation of the applicant, the reasonable cost of which the
27 applicant must bear. The [superintendent] may issue a license to an applicant under

1 this [article] if the [superintendent] finds that all of the following conditions have
2 been fulfilled:

3 (1) the applicant has complied with Sections 201 and 202;

4 (2) the competence, experience, character, and general fitness of the
5 executive officers, directors, and controlling persons indicate that it is in the interest
6 of the public to permit the applicant to engage in money transmission; and

7 (3) the applicant has paid the requisite application and license fees.

8 (b) The [superintendent] shall approve or deny an application for an original
9 license within 120 days after a complete application is filed. The [superintendent]
10 for a good cause may extend the period. The [superintendent] shall notify the
11 applicant of the date on which the application is determined to be complete. If the
12 application is not approved or denied within the period allowed for approval, the
13 application is deemed approved and the [superintendent] shall issue the license under
14 this [article] effective as of the first business day after expiration of the period.

15 (c) An applicant whose application is denied by the [superintendent] under
16 this [article] may appeal from the denial within 30 days after receipt of the notice of
17 the denial in a hearing before the [superintendent] pursuant to the [administrative
18 procedure act].

19 **Source:** Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code
20 Section 45-7-210.

21 **Reporter's Note**

22 The Drafting Committee has previously inquired as to whether States have
23 mandatory time frames in which the superintendent must respond to license
24 applications. The Money Transmitters' Regulators Association ("MTRA") supplied

1 the Drafting Committee with sample statutory provisions that included mandatory
2 time frames for response to a license application. Based on existing state practice,
3 the Drafting Committee decided on a 120-day response period. The MTRA Model
4 Legislation Outline recommends a 120-day time period. The extension for “good
5 cause” comes from the Maine Act to Regulate Money Transmitters and Amend
6 Consumer Credit Laws, 32 M.R.S.A. Section 6109(2).

7 **SECTION 204. RENEWAL OF LICENSE.**

8 (a) A licensee under this [article] must apply for a renewal of its license and
9 pay a renewal fee annually on the anniversary of the issuance of the license or, if that
10 date is not a business day, on the first business day after that date.

11 (b) A licensee under this [article] shall submit with the renewal fee a report,
12 in a form prescribed by the [superintendent]. The [superintendent] shall send a copy
13 of the form to each licensee under this [article] no later than [three months]
14 immediately before the date for license renewal. The renewal report must state or
15 contain:

16 (1) a copy of the licensee’s most recent audited annual financial
17 statement or, if the licensee is a wholly owned subsidiary of another corporation, the
18 most recent audited consolidated annual financial statement of the parent
19 corporation or the licensee’s most recent audited consolidated annual financial
20 statement;

21 (2) the number of payment instruments sold by the licensee in this State
22 that have not been previously included on a renewal report, the monetary amount of
23 those instruments, and the monetary amount of those instruments currently
24 outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application which has not been previously reported to the [superintendent] on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in Sections 701 and 702; and

(5) a list of the locations in this State where the licensee or an authorized delegate engages in money transmission or other money-services business.

(c) The [superintendent], in a record, shall notify a licensee under this [article] that has not filed a renewal report or paid its renewal fee by the renewal date, and has not been granted an extension of time to do so by the [superintendent], that its license has been suspended. The licensee has 30 days after receipt of the notice of suspension in which to file a renewal report and to pay the renewal fee plus \$100 for each day thereafter the renewal form and application are not received by the [superintendent].

Source: Model Act Regulating Money Transmitters Section 11 (with modifications).

Reporter's Note

The Drafting Committee decided that it was too cumbersome to have a hearing provision for failure to renew a license. The Drafting Committee decided that a preferable alternative was for the license to expire if not renewed in a timely fashion. The licensee, however, will have 30 days to cure its failure to renew its license. As part of the renewal process, Article 2 licensees are required to submit additional information to the superintendent as a means of appraising the safety and soundness of the business.

1 screening an applicant, at the time of their initial entry into the money-services
2 business, as to their ability to meet their obligations.

3 **SECTION 207. PAYMENT INSTRUMENT IDENTIFICATION. A**

4 payment instrument sold by a licensee directly, or indirectly through an authorized
5 delegate, must bear the name of the licensee and a unique, consecutive number
6 clearly stamped or imprinted on the instrument.

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ARTICLE 3
LICENSING OF CHECK CASHERS

SECTION 301. APPLICATION FOR LICENSE.

(a) A person that is not an authorized delegate of a licensee under [Article] 2 or that is not licensed under [Article] 2 or 4 may not engage in the business of check cashing without first obtaining a license under this [article].

(b) A person licensed under this [article] may not engage in money transmission other than as an authorized delegate of a person licensed under [Article] 2.

(c) A person licensed under this [article] may also engage in the business of currency exchange without obtaining a separate license under [Article] 4.

(d) A person applying for a license under this [article] must do so in writing, under oath, and in a form prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in check cashing, including all limited stations and mobile locations;

1 (4) a description of the source of moneys to be used for check cashing;
2 and
3 (5) other information the [superintendent] reasonably requires with
4 respect to the applicant, but not more than the [superintendent] may require under
5 [Article] 2.

6 **Source:** Arizona Money Transmitter Law Section 6-1203; President's Commission
7 Act Section 7; Florida Money Transmitters' Code Section 560.205.

8 **Reporter's Note**

9 At the February 1998 drafting meeting, the Drafting Committee decided that
10 check cashers should be treated differently than money transmitters with respect to
11 licensing, bonding and, in particular, net worth. Because check cashers and
12 currency exchangers provide customers with funds immediately, they do not need
13 the same type of bond or security requirements. Existing state law makes a
14 distinction between check cashers and money transmitters with respect to
15 information provided to superintendents (e.g., audited as contrasted to unaudited
16 financial statements are requested and bond and net worth requirements are not
17 imposed). In general, fewer States have check-cashing laws. The Drafting
18 Committee decided to include separate licensing provisions in the Act as an
19 alternative to a unified licensing system as contained in the February 1998 draft.

20 A new provision has been added to require that check cashers provide
21 superintendents with information about the source of their funds. Superintendents
22 and law enforcement officials want to ensure that the cash used in such a business is
23 not derived from money laundering or other illegal activity. For a general discussion
24 of the main differences between Article 2 and Articles 3 and 4 see the Reporter's
25 Note to Section 201 (which also explains the rationale for separate licensing
26 requirements for different types of money-services businesses). The Note to Section
27 201 also discusses the reasons why certain types of information are requested from
28 applicants during the application process.

29 **SECTION 302. ISSUANCE OF LICENSE.**

30 (a) Upon the filing of an application under this [article], the [superintendent]
31 shall investigate the applicant's financial condition and responsibility, financial and

1 business experience, character, and general fitness. The [superintendent] may
2 conduct an on-site investigation of the applicant, the reasonable cost of which the
3 applicant must bear. The [superintendent] may issue a license to an applicant under
4 this [article] if the [superintendent] finds that all of the following conditions have
5 been fulfilled:

6 (1) the applicant has complied with Section 301;

7 (2) the competence, experience, character, and general fitness of the
8 executive officers, directors, and controlling persons indicate that it is in the interest
9 of the public to permit the applicant to engage in the business of check cashing; and

10 (3) the applicant has paid the requisite application and license fees.

11 (b) The [superintendent] shall approve or deny an application for an original
12 license within 120 days after a complete application is filed. The [superintendent]
13 for a good cause may extend the period. The [superintendent] shall notify the
14 applicant of the date on which the application is determined to be complete. If the
15 application is not approved or denied within the period allowed for approval, the
16 application is deemed approved and the [superintendent] shall issue the license under
17 this [article] effective as of the first business day after expiration of the period.

18 (c) An applicant whose application is denied by the [superintendent] under
19 this [article] may appeal from the denial within 30 days after receipt of the notice of
20 the denial in a hearing before the [superintendent] pursuant to the [administrative
21 procedure act].

Source: Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code Section 45-7-210.

Reporter's Note

See the Reporter's Note accompanying Section 202.

SECTION 303. RENEWAL OF LICENSE.

(a) A licensee under this [article] must apply biennially for a renewal of its license and pay a renewal fee biennially on the anniversary of the issuance of the license or, if that date is not a business day, on the first business day after that date.

(b) A licensee under this [article] shall submit with the renewal fee a report, in a form prescribed by the [superintendent]. The [superintendent] shall send a copy of the form to each licensee under this [article] no later than [three months] immediately before the date for license renewal. The renewal report must state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application which has not been previously reported to the [superintendent] on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in the business of check cashing, including limited stations and mobile locations.

(c) The [superintendent], in a record, shall notify a licensee under this [article] that has not filed a renewal report or paid its renewal fee by the renewal date, and has not been granted an extension of time to do so by the [superintendent],

1 that its license has been suspended. The licensee has 30 days after receipt of the
2 notice of suspension in which to file a renewal report and to pay the renewal fee plus
3 \$100 for each day thereafter the renewal form and application are not received by
4 the [superintendent].

5 **Source:** Model Act Regulating Money Transmitters Section 11 (with
6 modifications).

7 **Reporter's Note**

8 See the Reporter's Note accompanying Section 204. The Drafting
9 Committee decided to require check cashers and currency exchangers to renew their
10 licenses biennially rather than annually. Because check cashers and currency
11 exchangers pose no safety and soundness concerns, the superintendent does not
12 have a need to examine renewal reports on an annual basis for these businesses. The
13 superintendent, however, will have the authority to conduct an on-site examination
14 if the check casher or currency exchanger engages in money-laundering activity or
15 violates a provision of the Act.

16 **SECTION 304. FEES.**

17 (a) A nonrefundable application fee of [\$2,000] and a license fee of [\$2,000]
18 must accompany an application for a license under this [article]. The license fee
19 must be refunded if the application is denied.

20 (b) A biennial renewal fee of [\$2,000] must accompany a license renewal
21 report.

22 (c) A nonrefundable fee of [\$2,000] must accompany an application for
23 change of control.

24 **Source:** President's Commission Act Section 8. Paragraphs (b) and (c) are new.

25 **Reporter's Note**

26 See the Reporter's Note accompanying Section 205.

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ARTICLE 4
LICENSING OF CURRENCY EXCHANGERS

SECTION 401. APPLICATION FOR LICENSE.

- (a) A person that is not an authorized delegate of a licensee under [Article] 2 or that is not licensed under [Article] 2 may not engage in the business of currency exchange without first obtaining a license under this [article].
- (b) A person licensed under this [article] may not engage directly in money transmission but the person may act as an authorized delegate of a person licensed under [Article] 2.
- (c) A person licensed under this [article] may also engage in the business of check cashing without obtaining a separate license under [Article] 3.
- (d) A person applying for a license under this [article] must do so in writing, under oath, and in a form prescribed by the [superintendent]. The application must state or contain:
- (1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, and director;
 - (2) the location of the principal office of the applicant;
 - (3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations;

1 (4) a description of the source of moneys to be used for currency
2 exchange; and
3 (5) other information the [superintendent] reasonably requires with
4 respect to the applicant, but not more than the [superintendent] may require under
5 [Article] 2.

6 **Reporter's Note**

7 At the March 1999 drafting meeting, Observers noted that the Act should
8 contain a different Article for the licensing of check cashers and currency
9 exchangers. Although the provisions contained in Articles 3 and 4 are almost
10 identical, the Drafting Committee thought that States should be presented the option
11 to include less than all of the Articles in a money-services business licensing statute.
12 Thus, each of the licensing parts of the Act is separable. As indicated in the
13 Prefatory Note, at present, very few States have licensing requirements for currency
14 exchangers. At the same time, the activity of currency exchange (exchanging larger
15 amounts of one currency for smaller denominations in another, for example) has
16 been identified by law enforcement officials as vulnerable to money laundering (as
17 contrasted with check cashing).

18 For a general discussion of the main differences between Article 2 and
19 Articles 3 and 4 see the Reporter's Note to Section 201 (which also explains the
20 rationale for separate licensing requirements for different types of money-services
21 businesses) and Section 301. The Note to Section 201 also discusses the reasons
22 why certain types of information are requested from applicants during the
23 application process.

24 **SECTION 402. ISSUANCE OF LICENSE.**

25 (a) Upon the filing of an application under this [article], the [superintendent]
26 shall investigate the applicant's financial condition and responsibility, financial and
27 business experience, character, and general fitness. The [superintendent] may
28 conduct an on-site investigation of the applicant, the reasonable cost of which by the
29 applicant must bear. The [superintendent] may issue a license to an applicant under

this [article] if the [superintendent] finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 401;

(2) the competence, experience, character, and general fitness of the executive officers, directors, and controlling persons indicate that it is in the interest of the public to permit the applicant to engage in currency exchange; and

(3) the applicant has paid the requisite application and license fees.

(b) The [superintendent] shall approve or deny an application for an original license within 120 days after a complete application is filed. The [superintendent] for good cause may extend the period. The [superintendent] shall notify the applicant of the date on which the application is determined to be complete. If the application is not approved or denied within the period allowed for approval, the application is deemed approved and the [superintendent] shall issue the license under this [article] effective as of the first business day after expiration of the period.

(c) An applicant whose application is denied a license by the [superintendent] under this [article] may appeal from the denial within 30 days after receipt of the notice of the denial in a hearing before the [superintendent] pursuant to the [administrative procedure act].

Source: Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code Section 45-7-210.

Reporter's Note

See the Reporter's Note accompanying Section 202.

1 **SECTION 403. RENEWAL OF LICENSE.**

2 (a) A licensee under this [article] must apply biennially for a renewal of its
3 license and pay a biennial renewal fee on the anniversary of the issuance of the
4 license or, if that date is not a business day, on the first business day after that date.

5 (b) A licensee under this [article] shall submit with the renewal fee a report,
6 in a form prescribed by the [superintendent]. The [superintendent] shall send a copy
7 of the form to each licensee under this [article] no later than [three months]
8 immediately before the date for license renewal. The renewal report must state or
9 contain:

10 (1) a description of each material change in information submitted by the
11 licensee in its original license application which has not been previously reported to
12 the [superintendent] on any required report; and

13 (2) a list of the locations in this State where the licensee or an authorized
14 delegate of the licensee engages in currency exchange.

15 (c) The [superintendent], in a record, shall notify a licensee under this
16 [article] that has not filed a renewal report or paid its renewal fee by the renewal
17 date, and has not been granted an extension of time to do so by the [superintendent],
18 that its license has been suspended. The licensee has 30 days after receipt of the
19 notice of suspension in which to file a renewal report and to pay the renewal fee plus
20 \$100 for each day thereafter the renewal form and application are not received by
21 the [superintendent].

1 **Source:** Model Act Regulating Money Transmitters Section 11 (with
2 modifications).

3 **Reporter's Note**

4 See the Reporter's Note accompanying Section 204. The Drafting
5 Committee decided to require check cashers and currency exchangers to renew their
6 licenses biennially rather than annually. Because check cashers and currency
7 exchangers pose no safety and soundness concerns, the superintendent does not
8 have a need to examine renewal reports on an annual basis for these businesses. The
9 superintendent, however, will have the authority to conduct an on-site examination
10 if the check casher or currency exchanger engages in money-laundering activity or
11 violates a provision of the Act.

12 **SECTION 404. FEES.**

13 (a) A nonrefundable application fee of [\$2,000] and a license fee of [\$2,000]
14 must accompany an application for a license under this [article]. The license fee
15 must be refunded if the application is denied.

16 (b) A biennial renewal fee of [\$2,000] must accompany a license renewal
17 report.

18 (c) A nonrefundable fee of [\$2,000] must accompany an application for
19 change of control.

20 **Source:** President's Commission Act Section 8. Paragraphs (b) and (c) are new.

21 **Reporter's Note**

22 See the Reporter's Note accompanying Section 205.

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ARTICLE 5
AUTHORIZED DELEGATES

SECTION 501. RELATIONSHIP BETWEEN LICENSEES AND
AUTHORIZED DELEGATES.

(a) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this [Act]. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient to permit compliance with this [Act].

(b) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the delegate.

(c) Upon the suspension or revocation of a license or the failure of a licensee to renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are on record with the [superintendent] of the suspension, revocation, or failure to renew. On receipt of the notice, an authorized delegate shall immediately cease to engage in the business as a delegate of the licensee.

Source: President’s Commission Act Section 10.

Reporter’s Note

The sections included in Article 5 are meant to further delineate the nature of the authorized delegate’s relationship with the licensee and to further clarify the delegate’s responsibilities and obligations. Similarly, this section also sets forth some of the general obligations that the licensee has with respect to providing the delegate with a contract and making the delegate aware of relevant laws and rules.

1 in its own capacity as if the delegate were a licensee itself. This section may trigger
2 potential civil and criminal liability pursuant to Sections 805 and 806.

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ARTICLE 6
EXAMINATIONS; REPORTS AND OTHER RECORDS

SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.

(a) The [superintendent] may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days’ notice in a record to the licensee. If the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act], the [superintendent] may examine the licensee or its authorized delegate without having given notice.

(b) If the [superintendent] concludes that an on-site examination under subsection (a) is necessary, the licensee shall pay all reasonably incurred costs of the examination. If the [superintendent] determines, based on the licensee’s financial statements and previous conduct in this State, that an on-site examination is unnecessary, the [superintendent] may waive the on-site examination.

Source: Model Act Regulating Money Transmitters Section 14 and Florida Money Transmitters’ Code Section 560.118(1)(a).

Reporter’s Note

This section provides the superintendent with general authority to conduct on-site supervisory exams of licensees and their authorized delegates. This provision is essential to ensure the safety and soundness of licensees and enable the superintendent to examine a licensee’s books and records in the event that it is suspected of money laundering or any other violation of the Act. Subsection (a) permits the superintendent to examine a licensee or its delegates without advance notice if the licensee is engaging in an unsafe or unsound practice or has violated the Act. Previously, this section stated that the superintendent had to have a reason to believe that the licensee or authorized delegate was engaging in an unsafe or unsound practice. It was noted, however, that this is an ambiguous standard that

1 may hinder the superintendent's ability to examine licensees and delegates in a
2 timely fashion (i.e., because licensee will be able to challenge the examination).
3 Additionally, it was noted that superintendents have not abused this authority where
4 it has been given to them by statute. Furthermore, some regulators have observed
5 that resource constraints provide a natural check on abuse of examination authority.

6 Subsection (b) allows the superintendent to waive an annual on-site
7 examination for licensees. It gives the superintendent flexibility in dealing with
8 reputable licensees. For example, if a licensee has been licensed for several years,
9 has maintained adequate financial resources, and has been cooperative with
10 regulators, the superintendent may determine that annual examinations are not
11 necessary. The waiver also conserves financial resources of the superintendent.

12 **SECTION 602. JOINT EXAMINATIONS.**

13 (a) An on-site examination of books, accounts, documents, and other
14 records listed in Section 605 may be conducted in conjunction with representatives
15 of other state agencies or agencies of another State or of the federal government as
16 determined by the [superintendent]. In lieu of an examination, the [superintendent]
17 may accept the examination report of an agency of this State or of another State or
18 of the federal government or a report prepared by an independent licensed or
19 certified public accountant. A joint examination or an acceptance of an examination
20 report is not a waiver of the [superintendent's] authority to conduct an examination
21 as provided by law. A joint report or a report accepted under this subsection is an
22 official report of the [superintendent] for all purposes.

23 (b) Information obtained during an examination under this [Act] may be
24 disclosed only as provided in Section 608.

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

26 **Reporter's Note**

1 The use of joint examinations is an important feature of the Act that will
2 reduce some of the increased costs that may be incurred as a result of licensing and
3 regulation. Many States already engage in joint examinations of major money-
4 services businesses or allow the submission of reports generated by another
5 regulator in lieu of an on-site examination. This is another provision designed to
6 conserve financial resources.

7 **SECTION 603. REPORTS.**

8 (a) A licensee shall file with the [superintendent] within 45 days after the
9 end of each fiscal quarter a current list of all authorized delegates, responsible
10 individuals, and locations in this State. The licensee must state or include the name
11 and street address of each location and authorized delegate.

12 (b) A licensee shall file with the [superintendent] within one day after its
13 occurrence a report of any of the following events:

14 (1) the filing of a petition under the United States Bankruptcy Code for
15 bankruptcy or reorganization by the licensee;

16 (2) the commencement of a proceeding to revoke or suspend its license
17 in a State or country in which the licensee engages in business or is licensed;

18 (3) the cancellation, interruption, or nonrenewal of the licensee's bond,
19 letter of credit; or other security;

20 (4) an [indictment], prosecution, or conviction of the licensee or of an
21 executive officer, director, or controlling person of a felony related to activities
22 regulated under this [Act] or involving a violation of state or federal money
23 laundering laws; or

1 (5) an [indictment], prosecution, or conviction of an authorized delegate
2 of a felony of which a licensee has knowledge related to activities regulated under
3 this [Act] or involving a violation of state or federal money laundering laws.

4 **Source:** President's Commission Act Section 13.

5 **Reporter's Note**

6 Reports are essential to the proper regulation of problem delegates or
7 licensees. Although on-site examinations are authorized, the reporting requirements
8 provide a cost efficient mechanism for superintendents and industry members alike.
9 Certain significant events must be reported immediately, including a money-
10 laundering allegation against a delegate. The Drafting Committee, after consultation
11 with Observers, decided that quarterly reporting was only necessary with respect to
12 changes in authorized delegates. Furthermore, annual audited financial statements
13 are only required for Article 2 licensees (as this relates once again to the safety and
14 soundness of money transmitters and their financial solvency). All licensees are
15 required to file renewal reports pursuant to Articles 2, 3 and 4.

16 **SECTION 604. CHANGE OF CONTROL.**

17 (a) A person or group of persons that proposes to acquire control shall give
18 written notice to the [superintendent] and request approval of the acquisition and
19 also submit a nonrefundable fee of [\$2,000].

20 (b) A licensee whose voting securities or voting interests are traded on an
21 organized securities exchange shall give the [superintendent] written notice of a
22 proposed change of control within [15] days after learning of the proposed change
23 of control.

24 (c) A licensee whose voting securities or voting interests are not traded on
25 an organized securities exchange shall give the [superintendent] written notice of a

1 proposed change of control at least 30 days before the date of the proposed change
2 of control.

3 (d) After review of the request for approval under subsection (a), the
4 [superintendent] may require the licensee to provide additional information
5 concerning the proposed controlling person or key shareholder of the licensee or
6 controlling person. The additional information must be limited to the same type
7 required of the licensee or controlling person as part of its original license or
8 renewal application.

9 (e) The [superintendent] shall approve a request for approval under
10 subsection (a) if, after investigation, the [superintendent] determines that the person
11 or group of persons requesting approval has the competence, experience, character,
12 and general fitness to operate the licensee or controlling person in a lawful and
13 proper manner and that the interests of the public will not be jeopardized by the
14 change of control.

15 (f) This section does not apply to the following persons or transactions:

16 (1) a registered dealer that acts as an underwriter or member of a selling
17 group in a public offering of the voting securities or voting interests of a licensee or
18 controlling person of a licensee;

19 (2) a person that acts as a proxy for the sole purpose of voting at a
20 designated meeting of the security holders or holders of voting interests of a licensee
21 or controlling person of a licensee;

(3) a person that acquires control of a licensee or controlling person of a licensee by devise or descent;

(4) a person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;

(5) a pledgee of a voting security or voting interest of a licensee or controlling person that does not have the right, as pledgee to vote the security or interest; or

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

(g) Before filing a request for approval to acquire control, a person may request in writing a determination from the [superintendent] as to whether the person would be considered a controlling person upon consummation of a proposed transaction. If the [superintendent] determines that the person would not be a controlling person, the [superintendent] shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (e).

Source: Florida Money Transmitters' Code Section 560.127 (with modifications).

Reporter's Note

Section 604 requires all persons who wish to acquire a controlling interest in a licensee (as broadly defined in Section 102) to apply for approval from the superintendent prior to obtaining control. The Drafting Committee determined that prior notification was essential for both safety and soundness reasons, as well as for the superintendent to properly assess the background of the persons who wish to acquire control (in order to evaluate whether such persons pose any risks in terms of

1 potential illegal activity). The superintendent retains discretion to request additional
2 information from an applicant (e.g., personal financial information) that might assist
3 the superintendent in evaluating the application.

4 The Committee and Observers debated the issue of whether the
5 superintendent should require applicants to provide personal financial information
6 under Section 604 about controlling persons, such as executive officers of the
7 acquiring company. It was noted, however, that it should not be a mandatory
8 requirement because many executive officers at larger publicly traded companies
9 would object to such a requirement as an unnecessary invasion of privacy, since the
10 financial well-being of the company would bear no connection to the officer's
11 personal wealth. The superintendent retains the discretion to request such
12 information for smaller entities where the superintendent needs more information to
13 make an assessment of net worth and financial capability (i.e., individual proprietors
14 who wish to acquire control of a money-services business).

15 **SECTION 605. BOOKS, ACCOUNTS, DOCUMENTS, AND OTHER**
16 **RECORDS.**

17 (a) A licensee shall maintain books, accounts, documents, and other records
18 necessary to determine the licensee's compliance with this [Act]. At a minimum, a
19 licensee shall maintain the following for three years:

- 20 (1) a record of each payment instrument sold;
- 21 (2) a record of each payment instrument cashed;
- 22 (3) a general ledger posted at least monthly containing all asset, liability,
23 capital, income, and expense accounts;
- 24 (4) bank statements and bank reconciliation records;
- 25 (5) records of outstanding payment instruments;
- 26 (6) records of each payment instrument paid within the three-year period;

1 (7) a list of the last known names and addresses of all of the licensee's
2 authorized delegates; and
3 (8) any other books, accounts, documents, and other records that may be
4 prescribed by the [superintendent] by rule.

5 (b) The items specified in subsection (a) may be maintained in paper,
6 photographic, electronic, or similar medium.

7 (c) Books, accounts, documents, and other records may be maintained
8 outside of this State if they are made accessible to the [superintendent] on seven
9 days' notice in a record.

10 **Source:** Model Act Regulating Money Transmitters Section 15 (with
11 modifications).

12 **Reporter's Note**

13 This section combines the more general reporting provisions of the Florida
14 Money Transmitters' Code Section 560.310 and the more detailed reporting
15 requirements contained in Section 15 of the Model Act Regulating Money
16 Transmitters. The Drafting Committee determined that the statutory prescription
17 for recordkeeping should be a minimum and that additional books and records might
18 be required by rule, if needed. Therefore, the current Section 605 is an
19 amalgamation of two previous provisions. The reporting requirements contained in
20 Section 605 pertain mainly to money transmitters (with respect to the sale of
21 payment instruments). Most check cashing and currency exchange law simply states
22 that the licensee must maintain books and records as required by rule. Both
23 Committee members and Observers were in agreement with a three-year record
24 retention period. The record retention period also reflects existing state practice.

25 **SECTION 606. MONEY LAUNDERING REPORTS.**

26 (a) A licensee shall file with the [attorney general] all reports required by
27 federal currency reporting, record keeping, and suspicious transaction reporting

1 requirements as set forth in 31 U.S.C Section 5311, 31 C.F.R. Part 103, and other
2 federal and state laws pertaining to money laundering.

3 (b) The timely filing of a complete and accurate report required under
4 subsection (a) with the appropriate federal agency in compliance with the reporting
5 requirements of subsection (a), unless the [superintendent] notifies the licensee that
6 the [attorney general] has notified the [superintendent] that reports of this type are
7 not being regularly and comprehensively transmitted by the federal agency to the
8 [attorney general].

9 **Source:** Abbreviated version of Florida Money Transmitter Code Section 560.128
10 and President's Commission Model Financial Transaction Reporting Act Section 5
11 (Reports to the Attorney General).

12 **Reporter's Note**

13 Money-services businesses are required to file relevant reports required
14 under federal or state law with respect to suspected money laundering. This
15 provision is meant to achieve two purposes. First, it requires licensees and their
16 authorized delegates to comply with federal and state anti-money-laundering
17 reporting requirements. By making this requirement explicit in a state statute,
18 money-services businesses will be put on notice of their reporting obligations.
19 Second, the superintendent has a basis for taking enforcement actions against non-
20 compliant licensees and delegates.

21 This section also permits licensees to comply with state reporting
22 requirements by filing the appropriate federal anti-money-laundering reports, and
23 thereby avoid duplicative filing. For most jurisdictions, federal data and reports are
24 available through FinCEN's Gateway computer system. According to information
25 the Drafting Committee received from the National Association of Attorneys
26 General, seven States receive such data on a computer tape from FinCEN under a
27 memorandum of understanding.

28 Approximately ten States require that a money-services business comply
29 with all federal and state money-laundering and currency transaction reporting laws.
30 State laws typically replicate the federal law and require that cash transactions in
31 excess of \$10,000 be reported to a state authority, as well as to the U.S. Treasury.
32 Most of the state reporting law does not specifically address money-services

1 businesses (but may apply to money-services businesses by implication). Several
2 States, including Colorado, Connecticut, Idaho, Indiana and Oklahoma, require
3 financial institutions to file suspicious activity reports concurrently with Federal and
4 state authorities. Arizona has its own suspicious activity form for financial
5 institutions. Suspected money-laundering activities are reported to Arizona's
6 Attorney General on a one-page form. Georgia provides that each financial
7 institution must keep a record of currency transactions in excess of \$10,000 and that
8 those reports must be filed with the State within 15 days of the transaction.

9 **ELECTRONIC FILING OF RECORDS.** The [superintendent], by rule, may
10 order that an application, report, or record that is required to be filed pursuant to
11 this [Act] be filed electronically.

12 **Source:** Proposed addition to Florida Money Transmitters' Code (new Section
13 560.120).

14 **Reporter's Note**

15 This provision is included in a series of proposed amendments to the Florida
16 Money Transmitters' Code that have been drafted by the Florida State Department
17 of Banking. These amendments have not been put before the Florida Legislature.
18 At the October 1998 drafting meeting, there was a general sentiment that there
19 needed to be some provision for the submission of records electronically, as well as
20 in writing.

21 **SECTION 608. CONFIDENTIALITY OF RECORDS.**

22 (a) Except as otherwise provided in this [Act], the records of the
23 [superintendent] relating to licensees and authorized delegates are not public records
24 and are not open to inspection by the public. Neither the [superintendent], except as
25 otherwise provided in subsections (b) through (d), nor an employee of the
26 [superintendent] may disclose information obtained in the discharge of official duties
27 to a person not employed by the [name of appropriate state department or
28 regulatory agency].

1 (b) The [superintendent] may disclose confidential information pertaining to
2 a licensee and authorized delegate to:

3 (1) the attorney general of this State;

4 (2) a representative of a federal or state agency or a foreign country
5 having regulatory or supervisory authority over the activities of the licensee and
6 authorized delegate if the representative is permitted to and, upon request of the
7 [superintendent], discloses similar information respecting licensees and authorized
8 delegates under its regulation or supervision and who avers in writing under oath
9 that the representative will maintain the confidentiality of the information; and

10 (3) to a federal, state, or [county] grand jury in response to a lawful
11 subpoena.

12 (c) The [superintendent] may:

13 (1) disclose the fact of a licensee's filing of an application with the
14 [superintendent] under this [Act], give notice of a hearing, if any, regarding an
15 application, and announce the action taken on the application;

16 (2) disclose a final decision in connection with proceedings for the
17 suspension or revocation of a license issued under this [Act]; and

18 (3) for general statistical information, prepare and circulate a report
19 reflecting the assets and liabilities of licensees and authorized delegates, including
20 other information considered pertinent to the purpose of the report.

21 (d) This section does not preclude the disclosure of information admissible
22 in evidence in a civil or criminal action, suit, or proceeding brought by or at the

- 1 request of the [superintendent] to enforce or prosecute a violation of this [Act] or a
- 2 rule adopted or an order issued under this [Act].
- 3 **Source:** President's Commission Act Section 24 (with modifications).

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ARTICLE 7
PERMISSIBLE INVESTMENTS

SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments issued or sold and money transmitted by the licensee or its authorized delegates.

(b) The [superintendent], with respect to any licensees, may limit the extent to which a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit. The [superintendent] by rule may prescribe or by order allow other types of investments that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee’s outstanding payment instruments in the event of bankruptcy of the licensee.

Reporter’s Note

Money transmitters are required to maintain a certain level of investments that are equal to the value of their outstanding obligations as a means of protecting individual consumers. This is another safety and soundness requirement designed to safeguard funds received from consumers.

SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.

1 (a) Except to the extent otherwise limited by the [superintendent] pursuant
2 to Section 701, the following investments are permissible under Section 701:

3 (1) cash, a certificate of deposit, or other debt obligation of an insured
4 depository institution, as defined in Section 3 of the Federal Deposit Insurance Act
5 [12 U.S.C. Section 1813];

6 (2) a banker's acceptance or bill of exchange that is eligible for purchase
7 by member banks of the Federal Reserve System;

8 (3) an investment bearing a rating of one of the three highest grades as
9 defined by a nationally recognized organization that rates securities;

10 (4) an investment security that is an obligation of the United States or a
11 department, agency, or instrumentality thereof; an investment in an obligation that is
12 guaranteed fully as to principal and interest by the United States or an investment in
13 an obligation of a State or a governmental subdivision, agency, or instrumentality
14 thereof;

15 (5) receivables that are due to a licensee from its authorized delegates
16 pursuant to contracts which are not past due or doubtful of collection if the
17 aggregate amount of investments in receivables under this paragraph does not
18 exceed 20 percent of the total permissible investments of a licensee and a licensee
19 does not have at one time investments in receivables under this paragraph in any one
20 person aggregating more than 10 percent of the licensee's total permissible
21 investments; and

1 (6) a share or a certificate issued by an open-end management investment
2 company that is registered with the Securities and Exchange Commission under the
3 Investment Company Act of 1940 [15 U.S.C. Sections 80a-1 et. seq.], and the
4 portfolio of which is restricted by the management company's investment policy to
5 investments specified in paragraphs (1) through (4).

6 (b) The following investments are permissible under Section 701, but only
7 to the extent specified:

8 (1) an interest-bearing bill, note, bond, or debenture of a person whose
9 shares are traded on a national securities exchange or on a national over-the-
10 counter- market, if the aggregate investments under this paragraph do not exceed 20
11 percent of the total permissible investments of a licensee and a licensee does not at
12 one time have investments under this paragraph in any one person aggregating more
13 than 10 percent of the licensee's total permissible investments;

14 (2) a share of a person traded on a national securities exchange or a
15 national over-the-counter-market or a share or a certificate issued by an open-end
16 management investment company that is registered with the Securities and
17 Exchange Commission under the Investment Company Act of 1940, and the
18 portfolio of which is restricted by the management company's investment policy to
19 shares of a person traded on a national securities exchange or a national over-the-
20 counter-market, if the aggregate investments under this paragraph does not exceed
21 20 percent of the total permissible investments of a licensee and a licensee do not at

one time have investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and a licensee does not at one time have principal and interest outstanding under demand borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the [superintendent] determines to be permissible, to the extent specified by the [superintendent].

(c) The aggregate investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with Section 701.

Source: This is a new provision that works with some of the categories of permissible investments contained in the Model Act Regulating Money Transmitters Section 3.

Reporter's Note

At the October 1998 drafting meeting, the Drafting Committee expressed some concern about the types of permissible investments that have been included in model legislation, as well as in existing state money-transmission statutes. As stated in the Prefatory Note, money transmitters have to maintain investments that are equal to the aggregate face amount of all their outstanding funds transfers and payment instrument obligations (on a dollar for dollar basis). The Drafting Committee observed that certain investments appeared more risky than others –

1 especially in the absence of any limitations or caps on percentage of the licensee's
2 portfolio invested in any of these items.

3 The items that the Committee identified as potentially problematic were:

- 4 • shares in a money-market mutual fund, interest-bearing bills or notes or
5 bonds, debentures or stock traded on any national securities exchange or on
6 a national over-the-counter-market, or mutual funds primarily composed of
7 one or more investments as described in this section;
- 8 • a demand borrowing agreement made to a corporation or a subsidiary of a
9 corporation whose capital stock is listed on a national exchange; and
- 10 • receivables that are due to a licensee from its authorized delegates pursuant
11 to a contract which are not past due or doubtful of collection.

12 The Drafting Committee thought that these types of investments posed
13 higher levels of risk to the licensee and ultimately to the public than was appropriate
14 for money-services businesses. Industry Observers noted, however, that such
15 investments were commonly included in state law. In fact, the MTRA outline lists
16 such investments as permissible, though it states that loans should not exceed 10
17 percent of the net worth of a licensee, and the amount of such loans as a total
18 percentage of permissible investments may be subject to legislation.

19 The current list of permissible investments is an attempt to balance the
20 concerns of regulators for safety and soundness and of industry participants who
21 have concerns about their ability to properly conduct business. The categories of
22 investments listed in Section 702(b) permit the type of investments that had
23 previously raised concerns. The main difference in the new Section 702(b) and
24 current practice is that the aggregate cap on such investments is set at 20 percent of
25 the licensee's portfolio. Additionally, the licensee may not invest in more than 10
26 percent of any one person with respect to these same investment categories. This
27 balances the need to allow licensees to have flexible and diverse options for
28 investment, but also limits the aggregate amount that a licensee can invest in these
29 riskier categories.

30 Receivables, in particular, was one category that received considerable
31 attention by members of the Committee. Industry Observers, however, explained
32 that there was a practical reason for including receivables as a category of
33 permissible investments. They noted that the practice of including receivables as
34 permissible investments had become a necessity due to the use of automated money-
35 order dispensers. Typically, money orders are sold at sales outlets through
36 automated dispensers. The automated dispenser immediately records the sale of the

1 money order and notifies the money transmitter. This real-time “notification”
2 immediately triggers the obligation of a money transmitter to retain permissible
3 investments for the money order sold on a dollar for dollar basis. However, while
4 the obligation to maintain investments is triggered at the time of sale, there is a lag
5 of time until the sales outlet actually remits funds to the money transmitter. For the
6 time period between sale and remittance of the funds that the sales outlet has
7 received, the money transmitter needs to treat those “receivables” as part of its
8 permissible investment portfolio. Previously, authorized delegates had notified a
9 money transmitter of the number of money orders sold at the same time that it
10 remitted a check for the funds received.

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ARTICLE 8
ENFORCEMENT

**SECTION 801. ORDERS TO CEASE AND DESIST; POWERS OF
SUSPENSION AND REVOCATION.**

- (a) After notice and hearing, the [superintendent] may issue an order to
cease and desist, suspend or revoke a license, or order a licensee to revoke the
designation of an authorized delegate if:
- (1) the licensee does not comply with this [Act] or a rule adopted or an
order issued under this [Act];
 - (2) the licensee or authorized delegate of the licensee engages in fraud,
misrepresentation, deceit, or gross negligence;
 - (3) an authorized delegate violates the Bank Secrecy Act, a state or
federal anti-money-laundering statute, or a rule adopted or an order issued under
this [Act] as a result of the licensee’s willful failure to supervise the authorized
delegate or as a result of the willful misconduct or willful blindness of the licensee;
 - (4) the licensee is insolvent or suspends payment of its obligations, or
makes an assignment for the benefit of its creditors;
 - (5) the licensee does not remove an authorized delegate after the
[superintendent] issues and serves upon the licensee a final order setting forth a
finding that the authorized delegate has violated this [Act];
 - (6) the competence, experience, character, or general fitness of the
licensee or authorized delegate or a controlling person of the licensee or authorized

1 delegate indicates that it is not in the public interest to permit the person to engage
2 in the money-services business; or

3 (7) the licensee engages in an unsafe or unsound practice.

4 (b) In determining whether a person is engaging in an unsafe or unsound
5 practice, the [superintendent] may consider the size and condition of the money
6 transmitter, the magnitude of the loss, the gravity of the violation of this [Act], and
7 the previous conduct of the person involved.

8 **Source:** Florida Money Transmitters' Code Section 560.11; President's
9 Commission Act Sections 11 and 12.

10 **Reporter's Note**

11 Section 801 sets forth the circumstances pursuant to which the
12 superintendent may take disciplinary actions against a licensee. This is an important
13 mechanism for the prevention of money laundering. The issuance of a cease and
14 desist order and suspension and revocation of a license may only occur after a
15 hearing in accordance with the State's administrative procedure act. Licensee
16 violation of state money-laundering prohibitions is specified on the list. Section 801
17 also specifies the circumstances under which the superintendent may take action
18 against the licensee for the authorized delegate's conduct. Pursuant to Section
19 801(a)(3), the superintendent is authorized to take action against a licensee for a
20 delegate's violations of money-laundering prohibitions or any act done "as a result
21 of a course of a willful failure to supervise or of the willful misconduct or willful
22 blindness of the licensee." A willful misconduct standard has been chosen because a
23 strict liability standard may result in consequences disproportionate to the social
24 harm involved from the delegate's activity.

25 Some States provide more detailed standards for when a cease and desist
26 order becomes effective. The Texas Currency Exchange Transportation and
27 Transmission provisions of the Texas Finance Code provide that a cease and desist
28 order takes effect on issuance if the Banking Commissioner finds a threat of
29 immediate and irreparable harm to the license holder or the public. If no immediate
30 or irreparable harm is found, the order is not effective before 10 days after the order
31 is received. Other state laws enumerate separate and specific grounds for the denial
32 of a license or for revocation, suspension or restriction of a previously granted
33 license. Florida, for example, lists a material misstatement of fact in an initial or
34 renewal application, the loss of license in another jurisdiction (due to fraud or

1 dishonest dealing) and criminal convictions involving fraud or dishonest dealing as
2 grounds for license denial, suspension or non-renewal. See Florida Money
3 Transmitters' Code Section 560.114(2)(a)-(c).

4 **SECTION 802. AUTHORIZED DELEGATES; ORDERS TO CEASE**
5 **AND DESIST.**

6 (a) After notice and hearing, the [superintendent] may issue an order to
7 cease and desist against a licensee or its authorized delegate, including an order
8 requiring the licensee to cease engaging in the business through an authorized
9 delegate and to take appropriate affirmative action, if the [superintendent] finds that:

10 (1) the authorized delegate is violating this [Act] or a rule adopted or an
11 order issued under this [Act];

12 (2) the authorized delegate does not cooperate with an examination or
13 investigation by the [superintendent];

14 (3) the competence, experience, character, or general fitness of the
15 authorized delegate or a controlling person of the authorized delegate indicates that
16 it is not in the public interest to permit the person to engage in the money-services
17 business;

18 (4) the financial condition of the authorized delegate jeopardizes the
19 interests of the public in the conduct of the money-services business;

20 (5) the authorized delegate is engaging in an unsafe or unsound practice;

21 (6) the authorized delegate commits a felony.

1 (b) In determining whether a person is engaging in an unsafe or unsound
2 practice, the [superintendent] may consider the size and condition of the money
3 transmitter, the magnitude of the loss, the gravity of the violation of this [Act], and
4 the previous conduct of the person involved.

5 **Source:** President's Commission Act Section 10 (with modifications).

6 **Reporter's Note**

7 Section 802 complements Section 801. Section 802 sets forth the
8 circumstances pursuant to which the superintendent may take direct action against
9 the authorized delegate. This is another important enforcement and regulatory tool
10 for the prevention of money laundering. Because authorized delegates may be
11 potential sites for money-laundering activity (due to a lesser degree of supervision
12 and oversight and also the large number of delegates that may exist for a given
13 licensee), the superintendent needs to have authority to take action against the
14 delegate directly.

15 **SECTION 803. TEMPORARY ORDERS TO CEASE AND DESIST.**

16 (a) If the [superintendent] determines that a violation of this [Act] or of a
17 rule adopted or an order issued under this [Act] by a licensee or authorized delegate
18 is likely to cause immediate and irreparable harm to the licensee, its customers, or
19 the public as a result of the violation, or cause insolvency or significant dissipation
20 of assets of the licensee, the [superintendent] may issue a temporary order requiring
21 the licensee or authorized delegate to cease and desist from the violation. The order
22 becomes effective upon service upon the licensee or authorized delegate.

23 (b) A temporary order remains effective and enforceable pending the
24 completion of an administrative proceeding pursuant to Section 801 or 802.

1 (c) Within 10 days after a licensee or an authorized delegate is served with a
2 temporary order to cease and desist, the licensee or authorized delegate may petition
3 the [appropriate court], for an injunction setting aside, limiting, or suspending the
4 enforcement, operation, or effectiveness of the temporary order pending the
5 completion of an administrative proceeding pursuant to Section 801 or 802.

6 **Source:** This new provision is loosely based on Section 8(c) of the Federal Deposit
7 Insurance Act, 12 U.S.C. Section 1818(c).

8 **Reporter's Note**

9 There was some concern expressed at the October 1998 meeting that the
10 Act did not provide the superintendent with sufficient authority to deal with exigent
11 situations through the use of expedited procedures. Section 803 provides the
12 superintendent with limited authority to issue temporary orders to cease and desist
13 without prior notice and hearing procedures. The superintendent, however, must
14 have a reasonable belief that the licensee or its authorized delegate is engaging in an
15 unsafe or unsound activity or is violating a provision of the Act, before invoking
16 temporary powers.

17 **SECTION 804. CONSENT ORDERS.** The [superintendent] may enter into a
18 consent order at any time with a person to resolve a matter arising under this [Act].
19 A consent order must be signed by the person that it is issued to or by the person's
20 authorized representative, and must indicate agreement with the terms contained in
21 the order. A consent order need not constitute an admission by a person that this
22 [Act] or a rule adopted or an order issued under this [Act] has been violated.

23 **Source:** Model Act Regulating Money Transmitters Section 24.

24 **Reporter's Note**

25 Section 804 gives the superintendent the ability to enter into a negotiated
26 settlement with a money-services business with respect to alleged violations of the
27 Act and potential disciplinary proceedings. The use of consent orders provides the

1 superintendent with a flexible means of achieving enforcement goals while
2 minimizing the administrative and fiscal burden of lengthy administrative
3 proceedings and hearings.

4 **SECTION 805. CIVIL PENALTIES.**

5 (a) A person that intentionally violates this [Act] or a rule adopted or an
6 order issued under this [Act] may be assessed a civil penalty by [the superintendent]
7 in an amount equal to [\$1,000] per day plus the State's costs and expenses for the
8 investigation and prosecution of the matter, including reasonable attorney's fees.

9 (b) The [superintendent] may maintain an action in the [name of appropriate
10 court or adjudicatory body] in the [county] in which a violation of this [Act] or of a
11 rule adopted or an order issued under this [Act] is alleged to have occurred or in any
12 other [county] in which venue is permitted under [reference to this State's venue
13 statutes and rules] in the same manner as in other civil actions.

14 **Source:** Florida Money Transmitters' Code Section 560.117; President's
15 Commission Act Section 23.

16 **Reporter's Note**

17 In addition to the ability to take disciplinary action against a money-services
18 business or its delegates for violations of the Act, civil penalties provide another
19 enforcement mechanisms aimed at deterring money laundering. As discussed at the
20 first meeting of the Drafting Committee, civil penalties are preferred enforcement
21 mechanisms due to the commercial nature of the Act. The current Section 805 was
22 the second of two alternatives included in the February 1998 draft. The first
23 alternative capped the maximum civil penalty at \$100 per day per violation. The
24 same provision also allowed licensees an opportunity to cure their violations. The
25 Drafting Committee decided that such a "cure" provision eliminated much of the
26 effectiveness of the civil money penalty provision. The second alternative, which
27 was retained in the Act, has been modified. Previously, it included a reference to a
28 fine equal to the gross business engaged in connection with the violation. The
29 Drafting Committee and Observers alike considered this too imprecise a formula.
30 Instead, a civil money penalty of \$1,000 per day is included. Additionally, the
31 Committee eliminated former Section 805(b), which included a separate fine of

1 \$1,000 per day for engaging in a money-services business without a license. It was
2 decided that this was, by definition, a violation of the Act and therefore did not need
3 to be the subject of a separate provision.

4 **SECTION 806. CRIMINAL PENALTIES.**

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

10 (b) A person that refuses to permit a lawful examination or investigation by
11 the [superintendent] is guilty of a [reference to state classification] felony.

12 (c) A person that intentionally engages in any conduct for which a license is
13 required under this [Act] without being licensed under this [Act] is guilty of a
14 [reference to state classification] felony.

15 **Source:** President's Commission Act Section 22. Subsection (e) was added from
16 the Maine Act to Regulate Money Transmitters and Amend Consumer Credit Laws,
17 32 MRSA Section 6124(3).

18 **Reporter's Note**

19 General criminal penalties for all violations are typical of regulatory codes.
20 False statements and other misrepresentations are at the core of the regulatory
21 process and therefore are listed separately. Although the Drafting Committee
22 expressed some concern about the inclusion of criminal penalties in a civil licensing
23 statute, Observers who represented law enforcement emphasized the need for
24 criminal penalties in connection with serious violations of the Act. The Committee
25 supports the inclusion of those provisions in Section 806 because they relate to very
26 serious, specific and tangible violations of the Act.

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ARTICLE 9
ADMINISTRATIVE PROCEDURES

SECTION 901. ADMINISTRATIVE PROCEDURES. All administrative proceedings under this [Act] must be conducted in accordance with [the state administrative procedure act].

Source: Florida Money Transmitters’ Code Section 560.108(2) (with modifications).

Reporter’s Note

The Drafting Committee noted that the Act should generally conform to the Model State Administrative Procedure Act. MTRA members also expressed their position that the Act should conform to state administrative procedure laws.

SECTION 902. HEARINGS.

(a) Except as otherwise provided in Sections 204(c), 303(c), 403(c), and 803, the [superintendent] may not suspend or revoke a license, issue an order to cease and desist, revoke the designation of an authorized delegate, or assess a civil penalty without notice and a hearing. The [superintendent] shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

(b) The [superintendent], in a record, shall give a licensee or an applicant at least [10] days’ notice of the time and place of a hearing, addressed to the licensee or applicant at its last known address.

Source: President’s Commission Act Section 12 (with modifications).

Reporter’s Note

Except for the issuance of temporary orders pursuant to Section 803, the superintendent is required to provide notice and have a hearing before taking any disciplinary or enforcement actions against a licensee or its authorized delegates.

1 The President's Commission Act only refers to suspension, revocation and denial of
2 licenses. Section 802 has been also been extended further to include cease and
3 desist authority and the ability to assess civil penalties.

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ARTICLE 10
MISCELLANEOUS PROVISIONS

**SECTION 1001. APPOINTMENT OF [SUPERINTENDENT] AS AGENT
FOR SERVICE OF PROCESS.**

(a) A licensee or a person that engages in the business without being
licensed under this [Act] is deemed to have:

(1) consented to the jurisdiction of the courts of this State for all actions,
suits, and proceedings arising under this [Act]; and

(2) appointed the [superintendent] as its lawful agent for the purpose of
accepting service of process in an action, suit, or proceeding arising under this
[Act].

(b) Within [three] business days after service of process upon the
[superintendent], the [superintendent] shall send by certified mail copies of all lawful
process accepted by the [superintendent] as a person’s agent to the person at its last
known address. Service of process is complete [three] business days after the
[superintendent] deposits the copies of the process in the United States mail.

**SECTION 1002. UNIFORMITY OF APPLICATION AND
CONSTRUCTION.** In applying and construing this Uniform Act, consideration
must be given to the need to promote uniformity of the law with respect to its
subject matter among States that enact it.

1 **SECTION 1003. SEVERABILITY CLAUSE.** If any provision of this [Act]
2 or its application to any person or circumstance is held invalid, the invalidity does
3 not affect other provisions or applications of this [Act] which can be given effect
4 without the invalid provision or application, and to this end the provisions of this
5 [Act] are severable.

6 **SECTION 1004. EFFECTIVE DATE.** This [Act] takes effect on

7 **SECTION 1005. SAVINGS AND TRANSITIONAL PROVISIONS.**