

DRAFT

FOR DISCUSSION ONLY

~~MONEY SERVICES~~ **UNIFORM MONEY-SERVICES BUSINESS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

~~February 1999~~ May 31, 1999

~~MONEY SERVICES~~ **UNIFORM MONEY-SERVICES BUSINESS ACT**

~~With Notes~~ WITH PREFATORY NOTE AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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2 | proposal.  
3 |

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**BUSINESS ACT\***

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\*Formerly the Nondepository Providers of Financial Services Act. The Drafting Committee ~~changed the~~voted to change the draft act's name at the October 1998 meeting. The Executive Committee approved the name change as of January 1999.

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1 ARTICLE 1

2 GENERAL PROVISIONS

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

5 ~~Reporter's Note:~~ The Proposed Money Services Business Act ("Proposed Act") was  
6 previously referred to as the Proposed Nondepository Providers of Financial  
7 Services Act. The name change was recommended at the last meeting of the  
8 Drafting Committee held in Washington, D.C. in October 1998. Observers and  
9 Drafting Committee members felt that "money services business" was a more  
10 appropriate description of the various types of entities that fall within the  
11 scope of the Proposed Act. The Financial Crimes Enforcement Network of the  
12 United States Department of Treasury ("FinCEN") has also suggested the use of  
13 this term in its proposed rules concerning the non depository providers such  
14 as money transmitters, check cashers, payment instrument sellers and stored  
15 value providers in its proposed rules concerning such industries. The  
16 Executive Committee of the National Conference of Commissioners on Uniform  
17 State Laws ("NCCUSL") approved the change of the Proposed Act's name at its  
18 last meeting in January 1999.

19  
20 ~~SECTION 102. DEFINITIONS.~~ In this [Act]:

21 ~~viders in its proposed rules concerning such industries. The Executive~~  
22 ~~Committee of the National Conference of Commissioners on Uniform State Laws~~  
23 ~~("NCCUSL") approved the change of the Proposed Act's name at its last meeting~~  
24 ~~in January 1999.~~

25  
26 SECTION 102. DEFINITIONS. In this [Act]:

27 (1) ~~"Applicant" means a person filing an application for a license~~  
28 ~~under this [Act].~~

29 ~~—[Act].~~

30 ~~Source:~~ Non Bank Funds Transmitter Group Model Act Regulating Money  
31 Transmitters ("Model Act Regulating Money Transmitters") Section 3.

32  
33  
34 (2) ~~"Authorized delegate" means a person designated by a~~  
35 ~~licensee to engage in a money services business on behalf of the licensee.~~

36 ~~—licensee.~~

37 ~~Source:~~ Model Act Regulating Money Transmitters Section 3 with modifications.  
38 ~~—modifications.~~

39 ~~Reporter's Note:~~ It is important to clearly define the outlets through which a  
40 money services business conducts its business. This definition will help to  
41 define the legal relationship between a money services business and those  
42 outlets. The Money Transmitters Regulators' Association Model Legislation  
43 Outline ("Model Legislation Outline") uses the term "authorized agent" as an  
44 alternative to authorized delegate. FinCEN, in its May 1997 proposed  
45 rulemaking concerning money services businesses, uses the term "agent" for  
46 those same entities. In its comments, FinCEN notes that "Treasury intends that  
47 the concept of 'agent' for the list requirement should be s, FinCEN notes that  
48 "Treasury intends that the concept of 'agent' for the list requirement should

1 ~~be as broad as the common law of agency would allow, that is, it would extend~~  
2 ~~to any relationship that would be deemed to create obligations of principal~~  
3 ~~and agent at common law. Thus, for example, it is likely that virtually all~~  
4 ~~independent contractor arrangements for money services businesses — whatever~~  
5 ~~their characterization for employment law or income tax purposes — would be~~  
6 ~~treated as creating principal agent relationships to define the parameters of~~  
7 ~~the rights, obligations and direct and derivative liabilities of the parties.~~  
8 ~~See Restatement (Second) of Agency Sections 28 and 14N." 62 Fed. Reg. 27895.~~  
9

10 ~~The Non Bank Funds Transmitters Group has suggested another alternative,~~  
11 ~~"money transmitter outlet" to refer to independently owned sales outlets. The~~  
12 ~~definition of money transmitter outlet defines the entity as "a person,~~  
13 ~~whether or not licensed or required to be licensed, who is engaged in the~~  
14 ~~business of transferring funds through a money transmitter even if incidental~~  
15 ~~to another business."~~  
16

17 ~~The principles of agency law may apply in some states with respect to the~~  
18 ~~relationship of the licensee and its authorized delegates. Some of the~~  
19 ~~Observers have noted that the relationship of delegate and licensee should~~  
20 ~~explicitly be governed by agency principles. This issue needs to be discussed~~  
21 ~~again during the March 1999 drafting meeting.~~  
22

23 ~~(3) "Check casher" means a person that accepts a payment~~  
24 ~~instrument in exchange for money delivered to a presenter at the time and~~  
25 ~~place of the presentation and receives compensation for the exchange and~~  
26 ~~receives at least [\$1,500] in such fees during any [30] — day period.~~

27 **Source: New**

28 **Reporter's Note:** ~~Industry Observers proposed the new definition at the October~~  
29 ~~1998 drafting meeting. The main difference in the new definition is the method~~  
30 ~~used to determine which businesses should be excluded because they cash checks~~  
31 ~~as a service that is incidental to their primary business and which is also at~~  
32 ~~a de minimis level. The exemption reflects an aggregate level of fees over a~~  
33 ~~30 day period rather than relying on a daily level of business.~~  
34

35 ~~Previously, the definition of check casher excluded "a person who cashes~~  
36 ~~checks in an amount less than or equal to [\$500] for any person on a single~~  
37 ~~day." Such definitions are used to exempt small businesses — such as grocery~~  
38 ~~stores and businesses where check cashing is a service offered to customers~~  
39 ~~incidental to another business (e.g., hotels) — from having to obtain a~~  
40 ~~license.~~

41 ~~An alternative definition that is used in some of the states excludes "persons~~  
42 ~~engaged in check cashing [or currency exchanging] which is incidental to the~~  
43 ~~retail sale of goods and services, whose compensation for cashing checks [or~~  
44 ~~exchanging currency] does not exceed 5 percent of the total gross income from~~  
45 ~~the retail sale of goods or services . . . ."~~  
46

47 ~~The Florida State Department of Banking has drafted suggested amendments to~~  
48 ~~its Money Transmitters' Code. To date, these amendments have not been~~  
49 ~~presented to the legislature. The proposed amendments include a revised~~  
50 ~~definition of check casher:~~

51 ~~"Check casher" means a person who, for compensation or gain,~~  
52 ~~or in the expectation of compensation or gain, either~~  
53 ~~directly or indirectly, sells currency in exchange for~~  
54 ~~payment instruments received, except travelers checks and~~  
55 ~~foreign drawn payment instruments.~~  
56

57 ~~Suggested Amendments to Florida Money Transmitters' Code Section 560.120.~~  
58

59 ~~(4) "Check cashing" means accepting, for compensation a payment~~

~~instrument in exchange for money delivered to a presenter at the time and place of the presentation.~~

~~**Source:** Arizona Money Transmitter Act Section 6-1201 (with modifications).  
**Reporter's Note:** It is important to have a definition for each of the services that have been grouped under the general heading of money services business. The Florida Banking Department has proposed an amendment to the definition of check cashing which mirrors the changes to the definition of check casher (i.e., it inserts the terms or gain or in the expectation of compensation or gain, either directly or indirectly into the definition).~~

~~(5) "Check issuer" means a person who engages in the business of issuing payment instruments and who is responsible for payment on the instrument.~~

~~**Source:** FinCEN proposed amendments to the Bank Secrecy Act Regulations — Definition and Registration of Money Services Businesses amending 31 C.F.R. Part 103 (with modifications).~~

~~**Reporter's Note:** The definition of check issuer has been eliminated and the activity of issuing payment instruments has been included as part of the definition of check seller. Existing state legislation tends to group these activities together. Some Observers have also pointed out that the phrase check issuer is unique to federal regulations.~~

#### ~~(ALTERNATIVE 1)~~

~~(5) "Control" means ownership of, or the power to vote, 25 percent or more of the outstanding voting securities of a licensee or controlling person. For the purpose of determining the percentage controlled by a person, the person's interest shall be aggregated with the interest of any other person controlled by an officer, partner, authorized delegate, spouse, parent, or child of the person.~~

~~**Source:** Model Act Regulating Money Transmitters Section 3 (first sentence); Arizona's A.R.S. 6-1201(3) (second sentence).~~

~~**Reporter's Note:** The previous language of Subsection (5) (formerly 1-102(8)) stated that "the interests of any other person controlled by that person are aggregated with that person's interest for the purposes of determining the percentage of a licensee controlled by a person." To Observers and Drafting Committee Members, this sentence appeared a bit vague. The addition of language from the Arizona statute is an attempt to provide clearer guidance as to when the interest of one person will be aggregated with the ownership interest of another.~~

~~More generally, the Drafting Committee felt that Subsection (5) was a formalistic definition of control and did not take into account the ability of persons to influence management in other ways such as the ability to elect directors or otherwise exert control. The circumstances under which shares will be aggregated is not fully defined. Furthermore, aggregation is only triggered when the interests of one person are controlled by the other person. Consequently, two alternatives have been offered which may provide for a more flexible approach to the notion of control.~~

#### ~~(ALTERNATIVE 2)~~

~~(5) "Control" means:~~

~~(A) ownership, control of, or the power to vote, directly or indirectly, 25 percent or more of a class of voting securities of a licensee or controlling person; or~~

~~(B) control of the election of a majority of directors or trustees of the licensee or controlling person; or~~

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

~~**Source:** Federal Bank Holding Company Act, 12 U.S.C.A. Section 1842(a) (2) (with modifications).~~

~~**Reporter's Note:** At the October 1998 Drafting Committee meeting, Drafting Committee members and Observers felt that the definition of control included in the September 1998 draft was too formalistic in that it required a threshold of 25 percent or more ownership to trigger control. Suggestions were made that the Federal Bank Holding Company Act might provide a useful definition that did not relate solely to a threshold of share ownership.~~

~~This is a very flexible category that allows for a broader interpretation of the concept of control. Additionally, the Bank Holding Company Act includes a presumption that a company that owns five percent or less of a bank's shares is not in control. Thus, there is a presumption against control if share ownership does not exceed five percent.~~

#### ~~**Selected Issues:**~~

- ~~• Should discussion of how control is determined (e.g., how share ownership is aggregated, how control may be determined after notice and hearing?) be included in the substantive provisions concerning control under Article 6 of the Proposed Act?~~
- ~~• Should the definition of control include a provision which allows for determination of control through notice and hearing?~~

~~(6) "Controlling person" means a person having control.~~

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

~~**Reporter's Note:** Some Observers have commented that the definition of control essentially negates the use of the terms "directly or indirectly" in the definition of controlling person. This was the case previously because the circumstances under which the aggregation of shares would occur was unclear.~~

~~(7) "Currency" means the coin and paper money of the United States, or of a foreign government which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country.~~

~~**Source:** Florida Money Transmitters' Code Section 560.102.~~

~~**Reporter's Note:** The use of the phrase "foreign government" replaces the words "any other country" as suggested by NCCUSL's Committee on Style in order to~~

~~make the definition of currency consistent with the definition of currency exchanger in 1-102(8) below.~~

~~(8) "Currency exchanger" means a person that, for compensation, exchanges currency of one government for currency of another government.~~

~~**Source:** Florida Money Transmitters' Code Section 560.102.~~

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

~~**Source:** Modified version of definition of "Conduct the business" included in The President's Commission on Model State Drug Laws Model Money Transmitter Licensing and Regulation Act ("President's Commission Act") Section 4(c); and the President's Commission on Model State Drug Laws Model Financial Transaction Reporting Act (Model Financial Transaction Reporting Act Section 4(d)).~~

~~**Reporter's Note:** Both Drafting Committee members and Observers noted that the previous draft used the term "conduct business" and "engage in the business" without further defining the term. The commentary to the President's Commission Act states "'[c]onduct the business' derives its meaning from federal tax law relating to deductions available to persons in the business of various profit seeking pursuits. Its Application to federal gambling legislation, 18 U.S.C. 1955, provides useful case law examples."~~

~~(10) "Executive officer" means a licensee's president, chairman of the executive committee, chief financial officer, responsible individual, or any other individual that performs similar functions.~~

~~**Source:** Model Act Regulating Money Transmitters, Section 3.~~

~~(11) "Key shareholder" means a person, or group of persons acting in concert, that owns 25 percent or more of a voting class of the securities of an applicant or licensee.~~

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

~~(12) "Licensee" means a person licensed under this [Act].~~

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

~~(13) "Limited station" means a place where a check casher is authorized to engage in check cashing for the employees of a single business or office at a single location at or near the business or office.~~

~~**Source:** Modified version of definition of "Limited Station" included in Title 5, Chapter 27 of Delaware Code (Cashing of Checks, Drafts and money Orders) 5 Del. Code. Section 2701(4).~~

~~**Reporter's Note:** The previous definition of a "location" blurred the distinction between mobile locations (e.g., travelling check cashing stations) and limited purpose locations (e.g., check cashing services which cash payroll~~

checks for a certain employer on or near the employer's premises). Therefore former 1 102(17) has been omitted and two new definitions of a mobile location and a limited facility have been added.

(14) "Material litigation" means litigation that, according to generally accepted accounting principles, is considered significant to an applicant's or licensee's financial condition and responsibility, and is referred to in that applicant's or licensee's [annual audited financial statements], reports to shareholders, or similar documents.

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

**Reporter's Note:** Some Observers noted that the language "and is referenced in that applicant's or licensee's annual reports" seems to leave what is "material" up to the licensee to decide. However, this does not take into account that the licensee would have to comply with certain accounting principles in preparing an annual report.

(15) "Mobile location" means a vehicle or other movable object where a check casher engages in check cashing.

**Source:** Modification of definition of "mobile unit" contained in Title 5, Chapter 27 of Delaware Code (Cashing of Checks, Drafts or Money Orders) 5 Del. Code. Section 2701.

**Reporter's Note:** The previous definition of a "location" blurred the distinction between mobile locations (e.g., travelling check cashing stations) and limited purposes locations (e.g., check cashing services which cash payroll checks for a certain employer on or near the employer's premises). Therefore former 1 102(17) has been omitted and two new definitions of a mobile location and a limited facility have been added. The term "movable object" replaces the term "movable means" used in the Delaware definition.

(1) "Applicant" means a person filing an application for a license under this [Act].

as broad as the common law of agency would allow, that is, it would extend to any relationship that would be deemed to create obligations of principal and agent at common law. Thus, for example, it is likely that virtually all independent contractor arrangements for money services businesses — whatever their characterization for employment law or income tax purposes — would be treated as creating principal agent relationships to define the parameters of the rights, obligations and direct and derivative liabilities of the parties. See Restatement (Second) of Agency Sections 28 and 14N." 62 Fed. Reg. 27895.

The Non Bank Funds Transmitters Group has suggested another alternative, "money transmitter outlet" to refer to independently owned sales outlets. The definition of money transmitter outlet defines the entity as "a person, whether or not licensed or required to be licensed, who is engaged in the business of transferring funds through a money transmitter even if incidental to another business."

The principles of agency law may apply in some states with respect to the relationship of the licensee and its authorized delegates. Some of the Observers have noted that the relationship of delegate and licensee should explicitly be governed by agency principles. This issue needs to be discussed again during the March 1999 drafting meeting.

(3) "Check casher" means a person that accepts a payment instrument in exchange for money delivered to a presenter at the time and

1 ~~place of the presentation and receives compensation for the exchange and~~  
2 ~~receives at least [\$1,500] in such fees during any [30] day period.~~

3 ~~**Source:** New~~

4 ~~**Reporter's Note:** Industry Observers proposed the new definition at the October~~  
5 ~~1998 drafting meeting. The main difference in the new definition is the method~~  
6 ~~used to determine which businesses should be excluded because they cash checks~~  
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9 ~~30 day period rather than relying on a daily level of business.~~

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12 ~~checks in an amount less than or equal to [\$500] for any person on a single~~  
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16 ~~license.~~

17 ~~An alternative definition that is used in some of the states excludes "persons~~  
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20 ~~exchanging currency] does not exceed 5 percent of the total gross income from~~  
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24 ~~its Money Transmitters' Code. To date, these amendments have not been~~  
25 ~~presented to the legislature. The proposed amendments include a revised~~  
26 ~~definition of check casher:~~

27 ~~"Check casher" means a person who, for compensation or gain,~~  
28 ~~or in the expectation of compensation or gain, either~~  
29 ~~directly or indirectly, sells currency in exchange for~~  
30 ~~payment instruments received, except travelers checks and~~  
31 ~~foreign drawn payment instruments.~~

32  
33 ~~Suggested Amendments to Florida Money Transmitters' Code Section 560.120.~~

34  
35 ~~(4) "Check cashing" means accepting, for compensation a payment~~  
36 ~~instrument in exchange for money delivered to a presenter at the time and~~  
37 ~~place of the presentation.~~

38 ~~**Source:** Arizona Money Transmitter Act Section 6 1201 (with modifications).~~

39 ~~**Reporter's Note:** It is important to have a definition for each of the services~~  
40 ~~that have been grouped under the general heading of money services business.~~  
41 ~~The Florida Banking Department has proposed an amendment to the definition of~~  
42 ~~check cashing which mirrors the changes to the definition of check casher~~  
43 ~~(i.e., it inserts the terms or gain or in the expectation of compensation or~~  
44 ~~gain, either directly or indirectly into the definition).~~

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46 ~~(5) "Check issuer" means a person who engages in the business of~~  
47 ~~issuing payment instruments and who is responsible for payment on the~~  
48 ~~instrument.~~

49 ~~**Source:** FinCEN proposed amendments to the Bank Secrecy Act Regulations —~~  
50 ~~Definition and Registration of Money Services Businesses amending 31 C.F.R.~~  
51 ~~Part 103 (with modifications).~~

52 ~~**Reporter's Note:** The definition of check issuer has been eliminated and the~~  
53 ~~activity of issuing payment instruments has been included as part of the~~  
54 ~~definition of check seller. Existing state legislation tends to group these~~  
55 ~~activities together. Some Observers have also pointed out that the phrase~~  
56 ~~check issuer is unique to federal regulations.~~



~~(ALTERNATIVE 1)~~

~~(5) "Control" means ownership of, or the power to vote, 25 percent or more of the outstanding voting securities of a licensee or controlling person. For the purpose of determining the percentage controlled by a person, the person's interest shall be aggregated with the interest of any other person controlled by an officer, partner, authorized delegate, spouse, parent, or child of the person.~~

~~**Source:** Model Act Regulating Money Transmitters Section 3 (first sentence); Arizona's A.R.S. 6-1201(3) (second sentence).~~

~~**Reporter's Note:** The previous language of Subsection (5) (formerly 1-102(8)) stated that "the interests of any other person controlled by that person are aggregated with that person's interest for the purposes of determining the percentage of a licensee controlled by a person." To Observers and Drafting Committee Members, this sentence appeared a bit vague. The addition of language from the Arizona statute is an attempt to provide clearer guidance as to when the interest of one person will be aggregated with the ownership interest of another.~~

~~More generally, the Drafting Committee felt that Subsection (5) was a formalistic definition of control and did not take into account the ability of persons to influence management in other ways such as the ability to elect directors or otherwise exert control. The circumstances under which shares will be aggregated is not fully defined. Furthermore, aggregation is only triggered when the interests of one person are controlled by the other person. Consequently, two alternatives have been offered which may provide for a more flexible approach to the notion of control.~~

~~(ALTERNATIVE 2)~~

~~(5) "Control" means:~~

~~(A) ownership, control of, or the power to vote, directly or indirectly, 25 percent or more of a class of voting securities of a licensee or controlling person; or~~

~~(B) control of the election of a majority of directors or trustees of the licensee or controlling person; or~~

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

~~**Source:** Federal Bank Holding Company Act, 12 U.S.C.A. Section 1842(a)(2) (with modifications).~~

~~**Reporter's Note:** At the October 1998 Drafting Committee meeting, Drafting Committee members and Observers felt that the definition of control included in the September 1998 draft was too formalistic in that it required a threshold of 25 percent or more ownership to trigger control. Suggestions were made that the Federal Bank Holding Company Act might provide a useful definition that did not relate solely to a threshold of share ownership.~~

~~This is a very flexible category that allows for a broader interpretation of~~

the concept of control. Additionally, the Bank Holding Company Act includes a presumption that a company that owns five percent or less of a bank's shares is not in control. Thus, there is a presumption against control if share ownership does not exceed five percent.

#### **~~Selected Issues:~~**

- ~~• Should discussion of how control is determined (e.g., how share ownership is aggregated, how control may be determined after notice and hearing?) be included in the substantive provisions concerning control under Article 6 of the Proposed Act?~~
- ~~• Should the definition of control include a provision which allows for determination of control through notice and hearing?~~

~~(6) "Controlling person" means a person having control.~~

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

~~**Reporter's Note:** Some Observers have commented that the definition of control essentially negates the use of the terms "directly or indirectly" in the definition of controlling person. This was the case previously because the circumstances under which the aggregation of shares would occur was unclear.~~

~~(7) "Currency" means the coin and paper money of the United States, or of a foreign government which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country.~~

~~**Source:** Florida Money Transmitters' Code Section 560.102.~~

~~**Reporter's Note:** The use of the phrase "foreign government" replaces the words "any other country" as suggested by NCCUSL's Committee on Style in order to make the definition of currency consistent with the definition of currency exchanger in 1-102(8) below.~~

~~(8) "Currency exchanger" means a person that, for compensation, exchanges currency of one government for currency of another government.~~

~~**Source:** Florida Money Transmitters' Code Section 560.102.~~

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

~~**Source:** Modified version of definition of "Conduct the business" included in The President's Commission on Model State Drug Laws Model Money Transmitter Licensing and Regulation Act ("President's Commission Act") Section 4(c); and the President's Commission on Model State Drug Laws Model Financial Transaction Reporting Act (Model Financial Transaction Reporting Act Section 4 (d)).~~

~~**Reporter's Note:** Both Drafting Committee members and Observers noted that the previous draft used the term "conduct business" and "engage in the business" without further defining the term. The commentary to the President's Commission Act states "[c]onduct the business" derives its meaning from federal tax law relating to deductions available to persons in the business of~~

1 various profit seeking pursuits. Its Application to federal gambling  
2 legislation, 18 U.S.C. 1955, provides useful case law examples."

3  
4 (10) "Executive officer" means a licensee's president, chairman of  
5 the executive committee, chief financial officer, responsible individual, or  
6 any other individual that performs similar functions.

7 **Source:** Model Act Regulating Money Transmitters, Section 3.

8  
9 (11) "Key shareholder" means a person, or group of persons acting  
10 in concert, that owns 25 percent or more of a voting class of the securities  
11 of an applicant or licensee.

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

13  
14 (12) "Licensee" means a person licensed under this [Act].

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

16  
17 (13) "Limited station" means a place where a check  
18 casher is authorized to engage in check cashing for the employees  
19 of a single business or office at a single location at or near  
20 the business or office.

21 **Source:** Modified version of definition of "Limited Station" included in Title  
22 5, Chapter 27 of Delaware Code (Cashing of Checks, Drafts and money Orders) 5  
23 Del. Code. Section 2701(4).

24 **Reporter's Note:** The previous definition of a "location" blurred the  
25 distinction between mobile locations (e.g., travelling check cashing stations)  
26 and limited purpose locations (e.g., check cashing services which cash payroll  
27 checks for a certain employer on or near the employer's premises). Therefore  
28 former 1-102(17) has been omitted and two new definitions of a mobile location  
29 and a limited facility have been added.

30  
31 (14) "Material litigation" means litigation that, according to  
32 generally accepted accounting principles, is considered significant to an  
33 applicant's or licensee's financial condition and responsibility, and is  
34 referred to in that applicant's or licensee's [annual audited financial  
35 statements], reports to shareholders, or similar documents.

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

37 **Reporter's Note:** Some Observers noted that the language "and is referenced in  
38 that applicant's or licensee's annual reports" seems to leave what is  
39 "material" up to the licensee to decide. However, this does not take into  
40 account that the licensee would have to comply with certain accounting  
41 principles in preparing an annual report.

42  
43 (15) "Mobile location" means a vehicle or other movable object  
44 where a check casher engages in check cashing.

45 **Source:** Modification of definition of "mobile unit" contained in Title 5,

~~Chapter 27 of Delaware Code (Cashing of Checks, Drafts or Money Orders) 5 Del. Code. Section 2701.~~

~~**Reporter's Note:** The previous definition of a "location" blurred the distinction between mobile locations (e.g., travelling check cashing stations) and limited purposes locations (e.g., check cashing services which cash payroll checks for a certain employer on or near the employer's premises). Therefore former 1 102(17) has been omitted and two new definitions of a mobile location and a limited facility have been added. The term "movable object" replaces the term "movable means" used in the Delaware definition.~~

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

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

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

(5) "Control" means:

(A) ownership, control of, or the power to vote, directly or indirectly, 25 percent or more of a class of voting securities or voting interests of a licensee or controlling person;

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

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

(6) "Controlling person" means a person having control.

(7) "Currency" means the coin and paper money of the United States, or of a foreign government, which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country. The term includes coin and paper money or a monetary unit of account established by an intergovernmental organization or by

1 agreement between two or more governments which is customarily used and accepted as a  
2 medium of exchange in more than one country.

3 (8) "Currency exchange" means exchanging money of one government for money  
4 of another government.

5 (9) "Engage in the business" means engage for compensation more than 10 times  
6 in any calendar year in activities regulated under this [Act].

7 (10) "Executive officer" means a licensee's president, chairman of the executive  
8 committee, chief financial officer, responsible individual, or other individual that performs  
9 similar functions.

10 (11) "Financial institution" means a bank, credit union, savings and loan  
11 association, or other similar institution.

12 (12) "Key shareholder" means a person or group of persons, acting in concert, that  
13 owns 25 percent or more of a voting class of the securities or of the voting interest of an  
14 applicant or licensee.

15 (13) "Licensee" means a person licensed under this [Act].

16 (14) "Limited station" means a private premises where a check casher is  
17 authorized to engage in the business of check cashing solely for the employees of the particular  
18 employer or group of employers specified in its license application, for no more than two days of  
19 each week.

20 (15) "Material litigation" means litigation that, according to generally accepted  
21 accounting principles, is considered significant to an applicant's or licensee's financial condition.

22 (16) "Mobile location" means a vehicle or a movable facility where check cashing  
23 occurs.

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

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

~~(17) "Money services business" means a person that is licensed under this [Act] or that engages in the business (see definition) including a check casher, payment instrument seller, money transmitter, and currency exchanger, that does any of the following:~~

~~-following:~~

~~(A) sells, issues, or provides payment instruments;~~  
~~-instruments;~~

~~(B) engages in the business of receiving money for transmission or transmitting money;~~

~~(C) engages in the business of exchanging payment instruments or money for any form of money or payment instrument; or~~

~~-or~~

~~(D) engages in the business of receiving money for obligors for the purpose of paying the obligor's bills, invoices, or accounts.~~

~~-accounts.~~

~~Source: President's Commission Act Section 4(k) (with modifications).~~

~~**Reporter's Note:** The President's Commission Act groups all money services businesses (except stored value providers) together as "money transmitters." The current definition substitutes the term "money transmitter" with "money services business." Subsection (e) of the President's Commission definition which included entities that meet the definition of a bank, financial agency or financial institution as set forth in 31 U.S.C. Section 5312, was omitted from this draft by agreement of the Drafting Committee at its March 1998 meeting.~~

~~(18) "Money transmitter" means a person that engages, for compensation, in the transmission of money by any means, including transmissions within this country or to or from locations outside this country by payment instrument, wire, telecopier, facsimile, electronic transfer, or courier. The term does not include a clearinghouse or other association of~~

1 ~~banks that effects transfers of funds between or among banks through check~~  
2 ~~clearing, wire transfer, automated clearinghouse, or similar services.~~

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

10 ~~**Reporter's Note:** The current definition of money transmitter was previously~~  
11 ~~included in the September 1998 draft as Alternative 1. Alternative 2 was the~~  
12 ~~proposed definition of money transmitter included as part of FinCEN's proposed~~  
13 ~~rulemaking concerning money services businesses. The Drafting Committee felt~~  
14 ~~that there was less utility in harmonizing state definitions with federal~~  
15 ~~definitions because: (1) state legislation had different goals and purposes~~  
16 ~~with respect to oversight of money services businesses (as compared to federal~~  
17 ~~oversight) and (2) the federal regulations concerning money services~~  
18 ~~businesses had not yet been promulgated and therefore FinCEN's proposed~~  
19 ~~definitions may change in the future.~~

20 ~~**Selected Issue:** Should the current definition of money transmitter (and also~~  
21 ~~the definition of payment instrument defined below) include electronic~~  
22 ~~currency providers who provide customers with the ability to transmit funds~~  
23 ~~over the Internet?~~

24 ~~**Discussion:** At present, several states including Connecticut and West Virginia~~  
25 ~~have amended their money transmission legislation to include stored value~~  
26 ~~providers. Other states, such as Texas, have included stored value providers~~  
27 ~~by interpretation. West Virginia defines "currency transmission" or "money~~  
28 ~~transmission" to include "the transmission of funds through the issuance and~~  
29 ~~sale of stored value cards which are intended for general acceptance and use~~  
30 ~~in commercial or consumer transactions." See WV ST. Section 32A-2-1(6)~~

31 ~~Connecticut has taken a different approach and has defined the term "payment~~  
32 ~~instrument" to include "electronic payment instruments." The Connecticut~~  
33 ~~Department of Banking, in a memorandum prepared concerning the amendments to~~  
34 ~~Connecticut law noted:~~

35  
36  
37 ~~The explosive growth in electronic commerce and the increasing use of~~  
38 ~~electronic payment instruments such as electronic travelers checks and~~  
39 ~~other prepaid instruments, exposes the consumers of such instruments to~~  
40 ~~the potential for loss due to the insolvency of the issuers of such~~  
41 ~~instruments or fraud. [The Connecticut bill] will provide protection to~~  
42 ~~consumers of electronic payment instruments by making issuers of such~~  
43 ~~instruments subject to the Commissioner's jurisdiction and by imposing~~  
44 ~~licensing, net worth and bonding requirements on such issuers.~~

45  
46 ~~See Memorandum from John P. Burke, Banking Commissioner regarding An Act~~  
47 ~~Concerning Electronic Payment Instruments and Currency and Foreign~~  
48 ~~Transactions Reporting (S.B. 230) dated February 17, 1998 presented at~~  
49 ~~Connecticut Banks Committee Public Hearing.~~

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51 ~~Based on recommendations from Observers, the current draft of the Proposed Act~~  
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54 ~~money transmitter). The current draft contains an additional definition of a~~  
55 ~~stored value provider. This may not be necessary and it will be useful for~~  
56 ~~Observers to provide input into whether the Connecticut approach seems the~~  
57 ~~most appropriate and also whether a separate definition is needed for stored~~  
58 ~~value providers as distinct from payment instrument sellers.~~

59  
60 ~~Additionally, the Drafting Committee will need to consider whether electronic~~  
61 ~~currency which is transmitted over the Internet (as compared with stored value~~  
62 ~~instruments) would fall within the current definition of money transmitter and~~

1 ~~also whether this form of currency transmission needs to be separately~~  
2 ~~addressed in the Proposed Act.~~

3  
4 ~~(19) "Outstanding", in regard to a payment instrument, means a~~  
5 ~~payment instrument issued by a licensee, which has been sold directly by the~~  
6 ~~licensee, or a payment instrument issued by a licensee which has been sold by~~  
7 ~~an authorized delegate of the licensee, which has been reported to the~~  
8 ~~licensee as having been sold and which has not yet been paid by or for the~~  
9 ~~licensee.~~

10 ~~**Source:** Model Act Regulating Money Transmitters Section 3.~~

11  
12 ~~(20) "Payment instrument" means a check, draft, money order,~~  
13 ~~traveler's check whether in written or electronic form, stored value~~  
14 ~~instrument, or other instrument for the transmission or payment of money~~  
15 ~~whether or not negotiable, and whether or not in written or electronic form.~~  
16 ~~The term does not include a credit card voucher, letter of credit, or any~~  
17 ~~instrument that is redeemable by the issuer in goods or services.~~

18 ~~**Source:** Model Act Regulating Money Transmitters Section 3 with modifications.~~  
19 ~~The term "stored value instrument" has been added. Additionally, proposed~~  
20 ~~modifications to the definition of "payment instrument" in the Florida Money~~  
21 ~~Transmitters' Code Section 560.103(14) have also been included which make~~  
22 ~~reference to writing or electronic form.~~

23 ~~**Reporter's Note:** Should the term payment instrument include stored value~~  
24 ~~products? Connecticut, for example, has recently amended its money~~  
25 ~~transmission legislation to include the term "electronic payment instrument"~~  
26 ~~which is defined as "a card or other tangible object for the transmission or~~  
27 ~~payment of money which contains a microprocessor chip, magnetic stripe, or~~  
28 ~~other means for the storage of information, that is prefunded and for which~~  
29 ~~the value is decremented upon each use, but does not include a card or other~~  
30 ~~tangible object that is redeemable by the issuer in the issuer's goods and~~  
31 ~~services." CT.ST. Section 36a-596. Connecticut has also amended its definition~~  
32 ~~of "instrument" to include an electronic payment instrument. Id.~~

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34 ~~At the October 1998 meeting, the Drafting Committee affirmed its decision to~~  
35 ~~include stored value products and stored value providers within the scope of~~  
36 ~~the Proposed Act. Drafting Committee members felt that the use of stored value~~  
37 ~~as a means of payment was similar to money transmission as a process.~~  
38 ~~Therefore, to the extent possible, the Drafting Committee recommended~~  
39 ~~including stored value within existing definitions of money services~~  
40 ~~businesses. Industry Observers subsequently made a similar recommendation with~~  
41 ~~respect to the expansion of the definition of payment instruments. Currently,~~  
42 ~~the Proposed Act follows the Connecticut approach and treats stored value~~  
43 ~~instruments (including electronic traveler's checks) as payment instruments.~~

44  
45 ~~(21) "Payment instrument seller" means a person that engages in~~  
46 ~~the business of issuing payment instruments or selling payment instruments~~  
47 ~~issued by another person, even if incidental to another business.~~

48 ~~**Source:** FinCEN Proposed Amendments to the Bank Secrecy Act Regulations B~~  
49 ~~Definition and Registration of Money Services Businesses amending 31 C.F.R.~~



~~Part 103 with proposed modifications of Non Bank Funds Transmitters Group.  
**Reporter's Note:** The term used by FinCEN is check seller rather than payment instrument seller.~~

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

~~**Source:** USL Drafting Manual.~~

~~**Reporter's Note:** This is the Standard NCCUSL formulation for this definition.  
**Reporter's Note on former Section 1-102(26):** The previous definition of "permissible investments" has been moved into Article 7 of the Proposed Act. Many Observers and Drafting Committee members felt that the definition of permissible investments was more of a substantive provision that belonged within the permissible investments segment of the draft.~~

~~(23) "Remit" means to make direct payment of funds to a licensee or its representative authorized to receive the funds or to deposit funds in a bank, credit union, savings and loan association, or other similar financial institution in an account specified by the licensee.~~

~~**Source:** Model Act Regulating Money Transmitters Section 3(m).~~

~~(24) "Responsible individual" means an individual that is employed by a licensee and that has principal active management authority over the money services business of the licensee in this State.~~

~~**Source:** Arizona Money Transmitter Act Section 6-1210(4) (with modifications)  
**Reporter's Note:** Many states have incorporated some notion of a "responsible" individual or controlling person, or money transmitter affiliated party to indicate persons who have oversight or managerial responsibility with respect to money services businesses. A responsible individual is someone who has an active role in management and operations as contrasted with a controlling person or key shareholder that may or may not have such a role.~~

~~(25) "State" means a State of the United States, the District of Columbia, Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.~~

~~**Reporter's Note:** The President's Commission Act groups all money services businesses (except stored value providers) together as "money transmitters." The current definition substitutes the term "money transmitter" with "money services business." Subsection (c) of the President's Commission definition which included entities that meet the definition of a bank, financial agency or financial institution as set forth in 31 U.S.C. Section 5312, was omitted from this draft by agreement of the Drafting Committee at its March 1998 meeting.~~

~~(18) "Money transmitter" means a person that engages, for compensation, in the transmission of money by any means, including~~

1 ~~transmissions within this country or to or from locations outside this country~~  
2 ~~by payment instrument, wire, telecopier, facsimile, electronic transfer, or~~  
3 ~~courier. The term does not include a clearinghouse or other association of~~  
4 ~~banks that effects transfers of funds between or among banks through check~~  
5 ~~clearing, wire transfer, automated clearinghouse, or similar services.~~

6 **Source:** ~~Model Act Regulating Money Transmitters Section 3 (with modifications)~~  
7 ~~proposed by New York Clearinghouse in letter dated October 2, 1997 to FinCEN~~  
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6 ~~**Reporter's Note:** The term used by FinCEN is check seller rather than payment~~  
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9 ~~(22) "Person" means an individual, corporation, business trust,~~  
10 ~~estate, trust, partnership, limited liability company, association, joint~~  
11 ~~venture, or any other legal or commercial entity. The term does not include~~  
12 ~~government, governmental subdivision, agency, or instrumentality, or public~~  
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22 ~~(23) "Remit" means to make direct payment of funds to a licensee~~  
23 ~~or its representative authorized to receive the funds or to deposit funds in a~~  
24 ~~bank, credit union, savings and loan association, or other similar financial~~  
25 ~~institution in an account specified by the licensee.~~

26 ~~**Source:** Model Act Regulating Money Transmitters Section 3(m).~~

27  
28 ~~(24) "Responsible individual" means an individual that is employed~~  
29 ~~by a licensee and that has principal active management authority over the~~  
30 ~~money services business of the licensee in this State.~~

31 ~~**Source:** Arizona Money Transmitter Act Section 6-1210(4) (with modifications)~~  
32 ~~**Reporter's Note:** Many states have incorporated some notion of a "responsible"~~  
33 ~~individual or controlling person, or money transmitter affiliated party to~~  
34 ~~indicate persons who have oversight or managerial responsibility with respect~~  
35 ~~to money services businesses. A responsible individual is someone who has an~~  
36 ~~active role in management and operations as contrasted with a controlling~~  
37 ~~person or key shareholder that may or may not have such a role.~~

38  
39 ~~(25) "State" means a State of the United States, the District of~~  
40 ~~Columbia, Puerto Rico, or any territory or insular possession subject to the~~  
41 ~~jurisdiction of the United States.~~

1 ~~Source: USL Drafting Manual.~~

2 ~~Reporter's Note: This is standard NCCUSL formulation.~~

3  
4 ~~(26) "Stored value instrument" means a card or other tangible~~  
5 ~~object for the transmission or payment of money which contains a~~  
6 ~~microprocessor chip, magnetic stripe, or other means for the storage of~~  
7 ~~information, which is prefunded, and for which the value is decremented upon~~  
8 ~~each use, but does not include a card or other tangible object that is~~  
9 ~~redeemable only by the issuer in the issuer's goods and services.~~

10 ~~-services.~~

11 ~~Source: Conn. Gen Stat. Ann 36a 596(1) (with modifications proposed by~~  
12 ~~Observers).~~

13 ~~Reporter's Note: Observers who represent electronic currency providers have~~  
14 ~~suggested the use of the Connecticut definition as an alternative to the~~  
15 ~~previous definition of stored value which was contained in the March 1998 and~~  
16 ~~September 1998 drafts. See Memorandum to the Reporter for the Money Services~~  
17 ~~Business Act dated October 29, 1998 from Mondex USA. This definition (as with~~  
18 ~~the previous definition of closed end stored value product also excludes~~  
19 ~~closed end products from the definition). One recommendation suggested by~~  
20 ~~Observers is the addition of the terms "or other value" after the word~~  
21 ~~"money." As noted, frequently stored value is not denominated in a national~~  
22 ~~currency, but in a scrip, tied to a national currency, that represents the~~  
23 ~~obligation of the issuer of stored value.~~

24  
25 ~~The previous definitions included in the earlier draft (which have been~~  
26 ~~eliminated from the current draft) are:~~

- 27  
28 • ~~"Closed end stored value product" means a stored value~~  
29 ~~product where the issuer is also the payee and the product~~  
30 ~~is issued to pay for a series of goods and services that are~~  
31 ~~provided by the issuer.~~

32  
33 ~~This definition was derived from A Commercial Lawyer's Take on the Electronic~~  
34 ~~Purse: An Analysis of Commercial Law Issues Associated with Stored Value Cards~~  
35 ~~and Electronic Money prepared by the American Bar Association's Uniform~~  
36 ~~Commercial Code Committee, Subcommittee on Payments, the Banking Law~~  
37 ~~Committee, Subcommittee on Domestic and International Payments and EFT and the~~  
38 ~~Committee on Law of Commerce in Cyberspace (1996). Many of the comments~~  
39 ~~received by FinCEN with respect to registration requirements for stored value~~  
40 ~~issuers discussed the distinction between closed end systems such as phone~~  
41 ~~cards and metro cards and open systems that can be used by consumers for a~~  
42 ~~wide variety of transactions. The definitions previously provided in the~~  
43 ~~Proposed Act were an attempt to distinguish between closed and open systems~~  
44 ~~for purposes of licensing and regulation. Other exceptions that may still need~~  
45 ~~to be included in the definition of stored value include a small dollar~~  
46 ~~exception for issuers.~~

- 47  
48 • ~~"Stored value" means funds or monetary value [greater than~~  
49 ~~\$500] represented in digital electronics format, whether or~~  
50 ~~not specially encrypted, and stored or capable of storage on~~  
51 ~~electronic media so as to be retrievable and transferable~~  
52 ~~electronically. [The term excludes funds or monetary value~~  
53 ~~in digital electronics format that is part of a closed end~~  
54 ~~stored value network.]~~

1 The previous definition of stored value was derived from the FinCEN proposed  
2 amendments to the Bank Secrecy Act Regulations B Definition and Registration  
3 of Money Services Businesses amending 31 C.F.R. Part 103. As noted previously,  
4 most comments received in response to FinCEN's proposed money services  
5 business rules suggested that stored value products should be eliminated  
6 altogether from the definition of money services business. The major reason is  
7 that these products are very new and still changing rapidly. At the first  
8 Drafting Committee meeting, however, the Drafting Committee observed that it  
9 might be prudent to create a framework for regulation since it would take some  
10 time before the draft act would be promulgated. The comments that FinCEN  
11 received also suggested that closed end systems be excluded from a definition  
12 of stored value. This would exclude private smart card and debit card systems  
13 such as university debit cards or metro cards, etc. In the preamble to the  
14 proposed rule, FinCEN stated that it may be appropriate to exclude closed  
15 system products that are limited to facilitating small transactions (also  
16 known as "micro" transactions). FinCEN also notes that "in a purely closed  
17 system, the stored value card is accepted only by a single merchant or entity  
18 and operates as prepayment for specific goods and services, such as public  
19 transportation or telephone calls. . . ." See 62 Fed. Reg. 27894. The Federal  
20 Reserve Bank of New York has suggested that the phrase "funds or monetary  
21 value" should be replaced with "intangible entitlement to be paid" because the  
22 term "funds" may give the impression that a stored value product has inherent  
23 value whereas the product only has value if the issuer is credit worthy.  
24 **Selected Issue:** Should stored value products be excluded from licensing if  
25 they are below a certain dollar threshold? Comments on FinCEN's proposed rules  
26 suggest that only stored value cards that are over \$500 in value should be  
27 included in the definition of money services business. At the October Drafting  
28 Committee meeting, there was much discussion of the issue of whether stored  
29 value products would be created in the near future to carry sums over \$500.  
30 Additionally, the Drafting Committee has previously discussed whether smaller  
31 denomination products might be purchased and used to launder funds in the  
32 aggregate (e.g., a money launderer buys several hundred phone cards).  
33 Alternatively, certain stored value products may hold less than \$500 but can  
34 be reloaded several times and thus exceed the \$500 threshold.

35  
36 (27) "Stored value provider" means a person that engages in the  
37 business of issuing, selling, or redeeming stored value instruments. The term  
38 includes a person that is subject to regulation, supervision, and examination  
39 by a federal or state banking agency and which does not issue, sell, or redeem  
40 stored value instruments to or from consumers.

41 **Source:** New.

42 **Reporter's Note:** The scope of regulation for stored value products needs to be  
43 clearly defined. As discussed above (under the definitions of payment  
44 instrument and money transmitter), states such as West Virginia and  
45 Connecticut have already included stored value within the scope of their money  
46 transmission statutes. As noted above, the definition of stored value  
47 instrument has been added (to replace the previous definitions of closed value  
48 stored value and stored value products). The new definition of stored value  
49 provider is consistent with the definition of stored value instrument. Mondex  
50 suggested in its comments to the Drafting Committee that the definition of  
51 stored value provider should exempt a provider that is "subject to regulation,  
52 supervision, and examination by a Federal or State banking agency, and which  
53 does not issue, sell or redeem stored value products to or from consumers."  
54 See Memorandum to Reporter for the Money Services Businesses Act prepared by  
55 Mondex USA dated October 29, 1998.

56  
57 The Drafting Committee will need to consider whether stored value providers  
58 should remain distinct entities from payment instrument sellers and if so, the  
59 function of payment instrument seller should also be revised to exempt

1 ~~entities subject to supervision by a banking regulator.~~

2  
3 ~~(28) "[Superintendent]" means the [state superintendent of banks~~  
4 ~~or other senior state regulator charged with the regulation of money services~~  
5 ~~businesses].~~

6 ~~**Source:** Model Act Regulating Money Transmitters Section 3.~~

7 ~~**Reporter's Note:** States use different regulatory bodies to supervise the~~  
8 ~~conduct of a money services business. In some states, the superintendent of~~  
9 ~~banking is vested with this responsibility. In other jurisdictions, it is the~~  
10 ~~State securities commissioner.~~

11  
12 ~~(29) "Traveler's check" means an instrument identified as a~~  
13 ~~traveler's check on its face or commonly recognized as a traveler's check and~~  
14 ~~issued in a specified denomination of currency with a provision for a specimen~~  
15 ~~signature of the purchaser to be completed at the time of purchase and a~~  
16 ~~countersignature of the purchaser to be completed at the time of negotiation.~~

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

18  
19 ~~(30) "Unsafe or unsound practice" means a practice or conduct that is~~  
20 ~~contrary to [generally accepted standards] applicable to a money services~~  
21 ~~business, or that is a violation of a rule or an order of the [Superintendent]~~  
22 ~~under this act, if the practice, conduct, or violation creates the likelihood~~  
23 ~~of material loss, insolvency, or dissipation of assets of the money services~~  
24 ~~business or otherwise materially prejudices the interests of its customers.~~

25 ~~**Source:** Florida Money Transmitters' Code Section 560.103(20).~~

26 ~~**Reporter's Note:** During its annual meeting in July 1998, the Money Transmitter~~  
27 ~~Regulators Association ("MTRA") noted that state regulators needed regulatory~~  
28 ~~authority with respect to the unsafe or unsound practices of money services~~  
29 ~~businesses. The Drafting Committee should also decide that the~~  
30 ~~superintendent's ability to take into account the size of the money services~~  
31 ~~business, the magnitude of the loss and the gravity of the violation should be~~  
32 ~~moved into the substantive provisions of the Proposed Act.~~

33  
34 ~~(18) "Money-services business" means a person that is licensed under this [Act]~~

35 ~~or engages in the business of money transmission, check cashing, or currency exchange.~~

36 ~~**Reporter's Note:** Observers who represent electronic currency providers have~~  
37 ~~suggested the use of the Connecticut definition as an alternative to the~~  
38 ~~previous definition of stored value which was contained in the March 1998 and~~  
39 ~~September 1998 drafts. See Memorandum to the Reporter for the Money Services~~  
40 ~~Business Act dated October 29, 1998 from Mondex USA. This definition (as with~~  
41 ~~the previous definition of closed end stored value product also excludes~~  
42 ~~closed end products from the definition). One recommendation suggested by~~  
43 ~~Observers is the addition of the terms "or other value" after the word~~  
44 ~~"money." As noted, frequently stored value is not denominated in a national~~  
45 ~~currency, but in a scrip, tied to a national currency, that represents the~~  
46 ~~obligation of the issuer of stored value.~~

~~The previous definitions included in the earlier draft (which have been eliminated from the current draft) are:~~

- ~~• "Closed end stored value product" means a stored value product where the issuer is also the payee and the product is issued to pay for a series of goods and services that are provided by the issuer.~~

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

- ~~• "Stored value" means funds or monetary value [greater than \$500] represented in digital electronics format, whether or not specially encrypted, and stored or capable of storage on electronic media so as to be retrievable and transferable electronically. [The term excludes funds or monetary value in digital electronics format that is part of a closed end stored value network.]~~

~~The previous definition of stored value was derived from the FinCEN proposed amendments to the Bank Secrecy Act Regulations B Definition and Registration of Money Services Businesses amending 31 C.F.R. Part 103. As noted previously, most comments received in response to FinCEN's proposed money services business rules suggested that stored value products should be eliminated altogether from the definition of money services business. The major reason is that these products are very new and still changing rapidly. At the first Drafting Committee meeting, however, the Drafting Committee observed that it might be prudent to create a framework for regulation since it would take some time before the draft act would be promulgated. The comments that FinCEN received also suggested that closed end systems be excluded from a definition of stored value. This would exclude private smart card and debit card systems such as university debit cards or metro cards, etc. In the preamble to the proposed rule, FinCEN stated that it may be appropriate to exclude closed system products that are limited to facilitating small transactions (also known as "micro" transactions) FinCEN also notes that "in a purely closed system, the stored value card is accepted only by a single merchant or entity and operates as prepayment for specific goods and services, such as public transportation or telephone calls. . . ." See 62 Fed. Reg. 27894. The Federal Reserve Bank of New York has suggested that the phrase "funds or monetary value" should be replaced with "intangible entitlement to be paid" because the term "funds" may give the impression that a stored value product has inherent value whereas the product only has value if the issuer is credit worthy.~~

~~**Selected Issue:** Should stored value products be excluded from licensing if they are below a certain dollar threshold? Comments on FinCEN's proposed rules suggest that only stored value cards that are over \$500 in value should be included in the definition of money services business. At the October Drafting Committee meeting, there was much discussion of the issue of whether stored value products would be created in the near future to carry sums over \$500. Additionally, the Drafting Committee has previously discussed whether smaller~~



denomination products might be purchased and used to launder funds in the aggregate (e.g., a money launderer buys several hundred phone cards). Alternatively, certain stored value products may hold less than \$500 but can be reloaded several times and thus exceed the \$500 threshold.

(27) "Stored value provider" means a person that engages in the business of issuing, selling, or redeeming stored value instruments. The term includes a person that is subject to regulation, supervision, and examination by a federal or state banking agency and which does not issue, sell, or redeem stored value instruments to or from consumers.

**Source:** New.

**Reporter's Note:** The scope of regulation for stored value products needs to be clearly defined. As discussed above (under the definitions of payment instrument and money transmitter), states such as West Virginia and Connecticut have already included stored value within the scope of their money transmission statutes. As noted above, the definition of stored value instrument has been added (to replace the previous definitions of closed value stored value and stored value products). The new definition of stored value provider is consistent with the definition of stored value instrument. Mondex suggested in its comments to the Drafting Committee that the definition of stored value provider should exempt a provider that is "subject to regulation, supervision, and examination by a Federal or State banking agency, and which does not issue, sell or redeem stored value products to or from consumers." See Memorandum to Reporter for the Money Services Businesses Act prepared by Mondex USA dated October 29, 1998.

The Drafting Committee will need to consider whether stored value providers should remain distinct entities from payment instrument sellers and if so, the function of payment instrument seller should also be revised to exempt entities subject to supervision by a banking regulator.

(28) "[Superintendent]" means the [state superintendent of banks or other senior state regulator charged with the regulation of money services businesses].

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

**Reporter's Note:** States use different regulatory bodies to supervise the conduct of a money services business. In some states, the superintendent of banking is vested with this responsibility. In other jurisdictions, it is the State securities commissioner.

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

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

(30) "Unsafe or unsound practice" means a practice or conduct that is contrary to [generally accepted standards] applicable to a money services

~~business, or that is a violation of a rule or an order of the [Superintendent]  
under this act, 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.~~

~~**Source:** Florida Money Transmitters' Code Section 560.103(20).~~

~~**Reporter's Note:** During its annual meeting in July 1998, the Money Transmitter  
Regulators Association ("MTRA") noted that state regulators needed regulatory  
authority with respect to the unsafe or unsound practices of money services  
businesses. The Drafting Committee should also decide that the  
superintendent's ability to take into account the size of the money services  
business, the magnitude of the loss and the gravity of the violation should be  
moved into the substantive provisions of the Proposed Act.~~

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

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

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

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

1 (23) "Record" means information that is inscribed on a tangible medium or that is  
2 stored in an electronic or other medium and is retrievable in perceivable form.

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

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

9 (26) "State" means a State of the United States, the District of Columbia, Puerto  
10 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
11 jurisdiction of the United States.

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

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

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

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

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

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

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

20 7. "Money-services business." As explained in the Prefatory Note, money-services business is  
21 used to define a group of entities that engage in any of the following activities: money  
22 transmission, sale of payment instruments (i.e., money orders or traveler's checks or stored-value  
23 instruments), check cashing and currency exchange. The definition focuses on the activities  
24 engaged in rather than the entity that engages in the activities. The Drafting Committee decided  
25 to use an activity-based definition because different money-services businesses may engage in  
26 one or more of these money-services business activities.

27 8. "Money transmission." Money transmission subsumes several activities or functions: the  
28 transmission of funds as well as the sale or issuance of payment instruments and the sale or  
29 issuance of stored-value instruments. Stored-value instruments, as defined in the Act, are treated  
30 as payment instruments. The grouping of funds transmission and the sale or issuance of payment  
31 instruments is consistent with existing state practice. The Drafting Committee has consolidated  
32 related functions to simplify the Act.

33 9. "Payment instrument." At the October 1998 meeting, the Drafting Committee affirmed its  
34 decision to include stored-value products and stored-value providers within the scope of the Act.  
35 Drafting Committee members determined that the use of stored value as a means of payment was  
36 similar to money transmission as a process. Therefore, to the extent possible, the Drafting  
37 Committee included stored value within existing definitions of money-services businesses. The  
38 Act follows the Connecticut approach and treats stored-value instruments (including electronic  
39 traveler's checks) as payment instruments.

40 10. "Stored-value instrument." At the October 1998 drafting meeting, the Committee decided  
41 that stored-value providers should be required to obtain licenses under the Act. At present,

1 stored-value instruments are encompassed within the definition of payment instruments. In  
2 1998, Connecticut enacted the Act Concerning Electronic Payment Instruments and Currency  
3 and Foreign Transactions Reporting. The Connecticut statute amended existing money-  
4 transmission law so those stored-value products (referred to as "electronic payment  
5 instruments") are treated as payment instruments. Furthermore, issuers of such payment  
6 instruments are subject to licensing and regulation in Connecticut. See CT. Legis. 98-192, cited  
7 in 1998 Conn. Legis. Serv. P.A. 98-192 (S.S.B. 230) (West 1998). The Committee will continue  
8 to review the definition of "stored value" in the Act. For example, there have been suggestions  
9 that such a payment substitute should not be defined in relation to an instrument but more  
10 broadly in terms of the actual concept of its "value."

11 11. "Unsafe or unsound practice." Under the Act, the superintendent possesses the authority to  
12 take action against a money transmitter or its authorized delegates in the event that the money  
13 transmitter engages in an unsafe or unsound practice. The term unsafe and unsound is a general  
14 concept that has been used in state and federal banking and financial law. Unsafe and unsound  
15 practices are ones that may pose financial risk to a financial institution. The Act provides a  
16 definition of unsafe and unsound that applies solely to money transmitters. Money transmitters  
17 who engage in unsafe or unsound activity may leave consumers with unredeemed money orders  
18 or uncollected funds transfers. The superintendent is able to take protective action in the event  
19 than a money transmitter engages in an unsafe or unsound activity. This prevents the dissipation  
20 of licensee assets that should be used to fulfill obligations to customers.

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

34 **SECTION 103. SUPERVISORY POWERS OF [SUPERINTENDENT].** Consistent  
35 with this [Act] the [superintendent] ~~has supervision over all money services~~  
36 ~~businesses and their authorized delegates.~~ shall adopt rules pursuant to the  
37 [administrative procedure act] necessary to achieve the purposes of this [Act].

38 **Source:** ~~Florida Money Transmitters' Code Section 560.105.~~  
39 ~~-560.105.~~

40 **Reporter's Note:** ~~Some Observers have suggested that an alternative to multi-~~

1 ~~state supervision would be a home state/host state licensing regime. The~~  
2 ~~Drafting Committee has rejected this approach as the state regulators and~~  
3 ~~other Observers favor a state based approach to regulation of money services~~  
4 ~~businesses. Resource sharing in the form of information sharing and joint~~  
5 ~~examinations, however, are provided for in the Proposed Act.~~

6 New

7 **Reporter's Note**

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

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

11 ~~(1) the United States or a department, agency, or instrumentality~~  
12 ~~thereof;~~

13 (2) the United States Postal Service;

14 (3) a State or a political subdivision thereof;

15 (4) a bank, bank holding company, thrift company, credit union,  
16 building and loan association, savings and loan association, savings bank, or  
17 mutual bank, offices of an international banking corporation, branches of  
18 foreign banks, a corporation organized pursuant to the Bank Service Act, or an  
19 Edge Act Agreement Corporation organized under the laws of a State or the  
20 United States, if the person does not issue, sell, or provide payment  
21 instruments through an authorized delegate that is not such a person;

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

26 ~~(6) a board of trade designated as a contract market under the~~  
27 ~~Commodity Exchange Act or a person that in the ordinary course of business~~  
28 ~~provides clearance and settlement services for a board of trade to the extent~~  
29 ~~of its operation as such;~~

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

32 ~~(8) a person that provides clearance or settlement services~~  
33 ~~pursuant to a registration as a clearing agency or an exemption from such~~  
34 ~~registration granted under the federal securities laws to the extent of its~~

~~operation as such;~~

~~(9) an operator of payment systems which provides processing, clearing, or settlement services, between or among persons excluded by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers to the extent of its operation as such;~~

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

~~(11) [reserved for future use].~~

~~**Source:** President's Commission Act Section 6 (with modifications).~~

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

~~Proposed exclusions involving boards of trade were submitted to FinCEN by various clearing organizations who collectively represent several of the largest commodities exchanges and commodities/options clearing organizations. In a letter dated October 8, 1997, these organizations recommended that FinCEN change the proposed definition of money services business to exclude regulated entities that are already subject to regulation by the SEC and the CFTC. The September 1998 Draft included a new exclusion under subsection (9) for payment systems operators who provide clearing and/or settlement services. This proposed exemption responded to the comments of Observers who note that the provision of those services is distinct from the issuing or selling of payment instruments or stored value products. This inclusion has been retained.~~

~~(1) the United States or a department, agency, or instrumentality thereof;~~

~~(2) the United States Postal Service;~~

~~(3) a State or a political subdivision thereof;~~

~~(4) a bank, bank holding company, thrift company, credit union, building and loan association, savings and loan association, savings bank, or mutual bank, offices of an international banking corporation, branches of foreign banks, a corporation organized pursuant to the Bank Service Act, or an Edge Act Agreement Corporation organized under the laws of a State or the United States, if the person does not issue, sell, or provide payment instruments through an authorized delegate that is not such a person;~~

~~(5) electronic funds transfer of government benefits for a federal, state, [county], or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a~~



~~State or governmental subdivision, agency, or instrumentality thereof;~~

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

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

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

~~(9) an operator of payment systems which provides processing, clearing, or settlement services, between or among persons excluded by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers to the extent of its operation as such;~~

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

~~(11) [reserved for future use].~~

~~**Source:** President's Commission Act Section 6 (with modifications).~~

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

~~Proposed exclusions involving boards of trade were submitted to FinCEN by various clearing organizations who collectively represent several of the largest commodities exchanges and commodities/options clearing organizations. In a letter dated October 8, 1997, these organizations recommended that FinCEN change the proposed definition of money services business to exclude regulated entities that are already subject to regulation by the SEC and the CFTC. The September 1998 Draft included a new exclusion under subsection (9) for payment systems operators who provide clearing and/or settlement services. This proposed exemption responded to the comments of Observers who note that the provision of those services is distinct from the issuing or selling of payment instruments or stored value products. This inclusion has been retained.~~

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

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

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

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

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

20 (9) an operator of a payment system which provides processing, clearing, or  
21 settlement services, between or among persons excluded by this section or licensees, in  
22 connection with wire transfers, credit-card transactions, debit-card transactions, transactions

1 involving stored-value instruments, automated clearing house transfers, or similar funds transfers  
2 to the extent of its operation as such an operator;

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

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

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

#### 10 **Reporter's Note**

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

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

23 3. The proposed exclusion involving boards of trade was submitted to the Financial Crimes  
24 Enforcement Network of the United States Department of Treasury by various clearing  
25 organizations that collectively represent several of the largest commodity exchanges and  
26 commodities/options clearing organizations. In a letter dated October 8, 1997, these  
27 organizations recommended that FinCEN change the proposed definition of money-services  
28 business to exclude regulated entities that are already subject to regulation by the U.S. Securities  
29 and Exchange Commission and the U.S. Commodities and Futures Trading Commission.

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

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

#### SECTION 105. LICENSE REQUIRED.

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

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

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

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

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

~~(d) A person that is an authorized delegate and also engages in the business other than as an authorized delegate must apply for a license under either Article 2 or Article 3.~~

~~-(e) 3.~~

(e) (d) A license is not transferable or assignable except as otherwise provided ~~in this {Act}.~~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~~12219, which prohibits the transfer of check selling licenses.

which prohibits the transfer of check selling licenses.

1 ~~Reporter's Note:~~ The act will need to distinguish between authorized delegates  
2 ~~who provide services solely pursuant to contracts with money services~~  
3 ~~businesses and those entities who serve as delegates but also operate as~~  
4 ~~principals with respect to some aspect of money services. For example, a check~~  
5 ~~casher might operate as a principal with respect to check cashing services and~~  
6 ~~also operate as an authorized delegate for a money transmitter.~~  
7  
8 ~~transmitter.~~  
9

## 10 **ARTICLE 2**

### 11 **~~LICENSING OF MONEY TRANSMITTERS AND PAYMENT INSTRUMENT SELLERS~~**

#### 12 **SECTION 201. APPLICATION FOR LICENSE.**

13 (a) A person may not engage, for consideration, in money transmission,  
14 advertise the person's engagement in money transmission, or sell, issue, or  
15 provide a payment instrument, without first obtaining a license under this  
16 article.

17 (b) A person licensed under this article may also engage in check  
18 cashing and currency exchange as authorized under Article 3 without being  
19 licensed under Article 3.

20 (c) An applicant under this article must apply in writing, under oath,  
21 and in the form prescribed by the [superintendent]. The application must  
22 include the following:

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

26 (2) the applicant's material litigation for the past [five] years;

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

30 (4) a list of the applicant's proposed authorized delegates, and  
31 the locations in this State at which the applicant and its authorized  
32 delegates propose to transmit money or sell, issue, or provide payment  
33 instruments;

34 (5) a sample form of contact for authorized delegates, if  
35 applicable, and a sample form of payment instrument, if applicable;

36 (6) the name and address of any clearing financial institution  
37 through which the applicant's payment instruments will be payable;

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

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

5           ~~(d) If an applicant is a corporation, the applicant shall also provide~~  
6 ~~the following:~~

7           ~~(1) the date of the applicant's incorporation and State or country~~  
8 ~~of incorporation;~~

9           ~~(2) a certificate of good standing from the State or country in~~  
10 ~~which the applicant is incorporated;~~

11           ~~(3) a description of the corporate structure of the applicant,~~  
12 ~~including any parent or subsidiary of the applicant, and whether any parent or~~  
13 ~~subsidiary is publicly traded on a national securities exchange;~~

14           ~~(4) the legal and any fictitious name, business and residential~~  
15 ~~addresses, and employment, for the last [five] years, of each executive~~  
16 ~~officer, key shareholder, and responsible individual of the applicant;~~

17           ~~(5) the material litigation and criminal convictions of each~~  
18 ~~executive officer, key shareholder, and responsible individual of the~~  
19 ~~applicant;~~

20           ~~(6) a copy of the applicant's audited financial statements for the~~  
21 ~~current year and, if available, for the next preceding [two] years, if~~  
22 ~~available;~~

23           ~~(7) a copy of the applicant's unconsolidated, unaudited financial~~  
24 ~~statements for the current year, and for the next preceding [two] years, if~~  
25 ~~available;~~

26           ~~(8) if the applicant is a publicly traded company, copies of all~~  
27 ~~filings made with the Securities and Exchange Commission within the year next~~  
28 ~~preceding the date of the filing of the application; and~~

29           ~~(9) other information the [superintendent] requires.~~

30           ~~(e) If the applicant is not a corporation, the applicant shall also~~  
31 ~~provide the following:~~

32           ~~(1) evidence that the applicant is registered to do business in~~

~~this State;~~

~~(2) the legal and any fictitious name, business and residential addresses, personal financial statements, and employment for the past [five] years, for each controlling person that is an individual and each responsible individual of the applicant;~~

~~(3) the material litigation and criminal convictions, for the past [five] years, of each controlling person that is an individual and each responsible individual of the applicant;~~

~~(4) a copy of the applicant's audited financial statements, for the current year, and, if available, for the next preceding [two] years; and~~

(5) other information the [superintendent] **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.

## **ARTICLE 2**

### **LICENSING OF MONEY TRANSMITTERS**

#### **SECTION 201. APPLICATION FOR LICENSE.**

~~(a) A person may not engage, for consideration, in money transmission, advertise the person's engagement in money transmission, or sell, issue, or provide a payment instrument, without first obtaining a license under this article.~~

~~(b) A person licensed under this article may also engage in check cashing and currency exchange as authorized under Article 3 without being licensed under Article 3.~~

~~(c) An applicant under this article must apply in writing, under oath, and in the form prescribed by the [superintendent]. The application must include the following:~~

~~(1) the legal name and residential and business addresses of the~~

1 ~~applicant and any fictitious or trade name used by the applicant in the~~  
2 ~~conduct of its business;~~

3 ~~(2) the applicant's material litigation for the past [five] years;~~

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

7 ~~(4) a list of the applicant's proposed authorized delegates, and~~  
8 ~~the locations in this State at which the applicant and its authorized~~  
9 ~~delegates propose to transmit money or sell, issue, or provide payment~~  
10 ~~instruments;~~

11 ~~(5) a sample form of contact for authorized delegates, if~~  
12 ~~applicable, and a sample form of payment instrument, if applicable;~~

13 ~~(6) the name and address of any clearing financial institution~~  
14 ~~through which the applicant's payment instruments will be payable;~~

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

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

19 ~~(d) If an applicant is a corporation, the applicant shall also provide~~  
20 ~~the following:~~

21 ~~(1) the date of the applicant's incorporation and State or country~~  
22 ~~of incorporation;~~

23 ~~(2) a certificate of good standing from the State or country in~~  
24 ~~which the applicant is incorporated;~~

25 ~~(3) a description of the corporate structure of the applicant,~~  
26 ~~including any parent or subsidiary of the applicant, and whether any parent or~~  
27 ~~subsidiary is publicly traded on a national securities exchange;~~

28 ~~(4) the legal and any fictitious name, business and residential~~  
29 ~~addresses, and employment, for the last [five] years, of each executive~~  
30 ~~officer, key shareholder, and responsible individual of the applicant;~~

31 ~~(5) the material litigation and criminal convictions of each~~  
32 ~~executive officer, key shareholder, and responsible individual of the~~



applicant;

~~(6) a copy of the applicant's audited financial statements for the current year and, if available, for the next preceding [two] years, if available;~~

~~(7) a copy of the applicant's unconsolidated, unaudited financial statements for the current year, and for the next preceding [two] years, if available;~~

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

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

~~(c) If the applicant is not a corporation, the applicant shall also provide the following:~~

~~(1) evidence that the applicant is registered to do business in this State;~~

~~(2) the legal and any fictitious name, business and residential addresses, personal financial statements, and employment for the past [five] years, for each controlling person that is an individual and each responsible individual of the applicant;~~

~~(3) the material litigation and criminal convictions, for the past [five] years, of each controlling person that is an individual and each responsible individual of the applicant;~~

~~(4) a copy of the applicant's audited financial statements, for the current year, and, if available, for the next preceding [two] years; and~~

~~(5) other information the [superintendent] \_\_\_\_\_~~ (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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~(f) The [superintendent] may waive any~~ (f) The [superintendent] may waive a

5 requirement of this section or permit an applicant to submit substituted information in lieu of the  
6 required information.

7 **Source:** Arizona Money Transmitter Law Section 6-1203; President's Commission Act Section  
8 7; Florida Money Transmitters' Code Section 560.205.

9 **Reporter's ~~Notes: Selected Issue: Note~~**

10 At the February 1998 ~~Drafting Committee~~drafting meeting, the Drafting Committee  
11 decided to create separate ~~licensing, net worth and bonding requirements for both~~  
12 ~~categories of money services businesses. It was felt~~licensing provisions for money  
13 transmitters (which includes payment instrument sellers and stored-value issuers and sellers) as  
14 distinct from check cashers and currency exchangers. It was determined that check cashers and  
15 currency exchangers posed less safety and soundness concerns because customers who  
16 exchanged currency or cashed checks were provided with cash ~~immediately. Additionally,~~  
17 ~~Observers stated that check cashers are immediately~~  
18 ~~typically subject to minimal or no net worth requirements.~~  
19 ~~requirements.~~

20  
21  
22 As set forth in Articles 2, 3, and ~~3, 4~~, separate licensing, ~~recordkeeping and net~~  
23 ~~worth~~ requirements ~~have been~~are established for money transmitters and for check  
24 cashers/foreign currency ~~exchanges. exchangers.~~ The superintendent's supervisory and  
25 enforcement powers, however, are the same for all ~~money services~~money-services businesses.  
26 ~~This is the approach taken by several states including Florida and Georgia.~~  
27 ~~This is to promote~~The licensing requirement promotes one of the main goals of the  
28 ~~Proposed Act which is~~Act: to create an appropriate regulatory framework to deter and  
29 eliminate the use of ~~money services~~money-services businesses as potential vehicles for money  
30 laundering. Only a handful of states have attempted to create a framework that links all money-  
31 services businesses together within a statute, while recognizing the differences inherent in the  
32 various activities concerned. Florida and Arizona, for example, are two states that have enacted  
33 statutes that have uniform enforcement and penalty provisions for all money-services businesses,  
34 while retaining separate licensing and recordkeeping provisions for each type of money-service  
35 activity. The Drafting Committee chose this approach because, for law enforcement purposes,  
36 the state superintendent and the Attorney General need general enforcement powers with respect  
37 to each of the different entities as a means of prevention and detection of money laundering.  
38 Therefore, the Act contains uniform enforcement provisions and different licensing requirements  
39 for each type of activity.

1 The licensing application is the first point at which the state may protect the public ~~from~~  
2 ~~permitting~~by prohibiting entry by those persons ~~who~~that would bring discredit on the industry,  
3 and the first source of information for investigators and regulators in the event that there is future  
4 misconduct by ~~the licensee.~~

5  
6 ~~-licensee.~~

7 a licensee. The information requested from

8 ~~At the October 1998 Drafting Committee meeting, it was decided that~~  
9 ~~stored value providers should be required to obtain licenses under the~~  
10 ~~Proposed Act. At present, stored value instruments are encompassed within the~~  
11 ~~definition of payment instruments. In 1998, Connecticut enacted the Act~~  
12 ~~Concerning Electronic Payment Instruments and Currency and Foreign~~  
13 ~~Transactions Reporting. This act amended existing money transmission~~  
14 ~~legislation money transmission legislation so that stored value products~~  
15 ~~(referred to as "electronic payment instruments") are treated as payment~~  
16 ~~instruments. Furthermore, issuers of such payment instruments are subject to~~  
17 ~~licensing and regulation in Connecticut. money so that stored value products~~  
18 ~~(referred to as "electronic payment instruments") are treated as payment~~  
19 ~~instruments. Furthermore, issuers of such payment instruments are subject to~~  
20 ~~licensing and regulation in Connecticut. transmitter applicants in Section 201 is the~~  
21 type of information recommended by the Money Transmitters Regulators' Association in Section  
22 IV of the Model Legislation Outline and also in the Model Act Regulating Money Transmitters.  
23 The information concerning criminal convictions and employment histories, as well as the  
24 identity of executive officers, key shareholders, controlling persons and responsible individuals  
25 is designed to assist the superintendent in determining whether the license applicant is a  
26 reputable business or whether there are any suggestions that the business might be used for  
27 illegal purposes. Additionally, information relating to the applicant's financial position  
28 (including information about net worth) is necessary in order to determine whether an applicant  
29 will be able to meet its obligations with respect to any obligations it might have (in connection  
30 with the sale of money orders, traveler's checks and stored value and funds transfer).

31 ~~See CT. Legis. 98-192 cited in 1998 Conn. Legis. Serv. P.A. 98-192 (S.S.B.~~  
32 ~~230) (West). West Virginia also adopted new legislation designed to amend its~~  
33 ~~current money transmission legislation. West Virginia's legislation includes~~  
34 ~~stored value within the definition of money transmission. 1998 West Virginia~~  
35 ~~Laws Ch. 73 (H.B. 4591). As in Connecticut, this triggers licensing and other~~  
36 ~~requirements for stored value providers. Texas has also interpreted its sale~~  
37 ~~of checks statute to apply to smart cards issued by non banks for us in open~~  
38 ~~networks. See Remarks of Catherine A. Ghigieri, Texas Department of Banking to~~  
39 ~~the PULSE EFT Assoc. Member Conference (October 11, 1996) located at~~  
40 ~~www.banking.state.tx.us/exec/speech10a.~~

41  
42 ~~-tx.us/exec/speech10a.~~

## 43 44 SECTION 202. SECURITY.

45 ~~{SUBSECTIONS (a) AND (b) ALTERNATIVE1}~~

46 ~~-1)~~

47 ~~(a) An application for a license, under this article, must be accompanied by a~~

48 (a) A surety bond, irrevocable letter of credit, or other similar security acceptable to the

49 [superintendent], in the amount of [\$50,000] must accompany an application for a license.

~~[superintendent] in the amount of [\$50,000].~~

~~-\$50,000].~~

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

(c) A security must be in a form satisfactory to the [superintendent] and ~~shall~~ run to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to ~~the receipt, handling, transmission, and payment of money in connection with the sale, issuance, and provision of payment instruments and the transmission of money.~~ money transmission.

~~{SUBSECTIONS (a) and (b) ALTERNATIVE2}~~

~~-2)~~

~~(a) An application for a license, under this article, must be accompanied by a surety bond, irrevocable letter of credit, or other similar security device acceptable to the [superintendent].~~

~~-[superintendent].~~

~~(b) Each application under this article shall be accompanied by, and each licensee shall maintain at all times, a bond executed by the licensee as principal and a surety company authorized to do business in this State as surety. The bond shall be in the amount of [\$25,000] for a licensee with five or fewer authorized delegates and locations; [\$100,000] for a licensee with more than five but fewer than [21] authorized delegates and locations; and an additional [\$5,000] for each authorized delegate and location in excess of [20] but fewer than [200] authorized delegates and locations, to a maximum of [\$250,000] and an additional [\$5,000] for ewer than [200] authorized delegates~~

~~and locations, to a maximum of [\$250,000] and an additional [\$5,000] for each authorized delegate and location in excess of [200] authorized delegates and locations, to a maximum of [\$500,000].~~

(d) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action directly on the bond or the [superintendent] may maintain an action on behalf of the claimant. The bond must be payable to any person injured by a wrongful act, omission, default, ~~each~~ fraud, or misrepresentation of a licensee or an authorized delegate or employee of the licensee in the conduct of its business as a licensee or to the State for the benefit of the [superintendent] and of the injured person. Only one bond is required of a licensee irrespective of the number of executive officers, directors, ~~locations, and location in excess of [200] employees, or authorized delegates and locations, to a maximum of [\$500,000].~~of the licensee.

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

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

(g) A security must remain effective for as long as the [superintendent] specifies but at least five years after the licensee ceases to be a money-services business in this State. However, the [superintendent] may permit the amount of security to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this State

1 is reduced. The [superintendent] may permit a licensee to substitute another form of security  
2 acceptable to the [superintendent] for the security effective at the time the licensee ceases to be a  
3 money-services business in this State.

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

9 **Source:** Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12  
10 Transmitters of Money; A.R.S. ~~Section 6-1205.~~

11 Section 6-1205.

12 ~~Reporter's Note: At present, money services businesses that engage solely in~~  
13 ~~check cashing or currency dealing and exchange do not have to post bond or a~~  
14 ~~security device. Alternative 1 which is derived mainly from the President's~~  
15 ~~Commission Act attempts to provide a uniform standard for all money services~~  
16 ~~businesses. An alternative would be to create different security requirements~~  
17 ~~based on the number of locations or authorized delegates, which the licensee~~  
18 ~~utilizes within a state. The Drafting Committee has not yet made a decision as~~  
19 ~~to which of these two options is preferable.~~

20 ~~-preferable.~~

21 ~~(c) The aggregate liability on a surety bond may not exceed the~~  
22 ~~principal sum of the bond. A claimant against a licensee may commence and~~  
23 ~~maintain an action directly on the bond or the [superintendent] may commence~~  
24 ~~not exceed the principal sum of the bond. A claimant against a licensee may~~  
25 ~~commence and maintain an action directly on the bond or the [superintendent]~~  
26 ~~may commence and maintain an action on behalf of the claimant. The bond must~~  
27 ~~be payable to a person injured by the wrongful act, omission, default, fraud,~~  
28 ~~or misrepresentation of a licensee or an authorized delegate or employee of~~  
29 ~~the licensee in the conduct of its business as a licensee or to the State for~~  
30 ~~the benefit of the [superintendent] and of the person injured. Only one bond~~  
31 ~~is required of a licensee irrespective of the number of officers, directors,~~  
32 ~~locations, employees, or authorized delegates of the licensee.~~

33 ~~(d) An irrevocable letter of credit must run to the State, for the~~  
34 ~~benefit of the [superintendent] and for the benefit of any person injured by a~~  
35   
36



1 ~~wrongful act, omission, default, fraud, or misrepresentation of a licensee or~~  
2 ~~an authorized delegate or employee of the licensee in the conduct of its~~  
3 ~~business as a licensee. Draws upon an irrevocable letter of credit must be~~  
4 ~~available by sight drafts in amounts determined by the [superintendent] up to~~  
5 ~~the aggregate amount of the irrevocable letter of credit.~~

6 ~~(e) A security must remain in effect until cancellation, which may occur~~  
7 ~~only after [30] days' written notice to the [superintendent] of the intended~~  
8 ~~cancellation.~~

9 ~~(f) A security must remain effective for as long as the [superintendent]~~  
10 ~~specifies but no less than [five] years after the licensee ceases its money~~  
11 ~~services business in this State. However, the [superintendent] may permit the~~  
12 ~~security to be reduced or eliminated before that time to the extent that the~~  
13 ~~amount of the licensee's payment instruments outstanding in this State is~~  
14 ~~reduced. The [superintendent] may permit a licensee to substitute another form~~  
15 ~~of security acceptable to the [superintendent] for the security effective at~~  
16 ~~the time the licensee ceases to be a money services business in this State.~~

17 ~~**Source:** President's Commission Act Section 8; Delaware Code, Chapter 27,~~  
18 ~~Section 2714.~~

19 ~~**Reporter's Note:** As discussed at the Drafting Committee's initial meeting in~~  
20 ~~October 1997, irrevocable letters of credit provide an alternative for~~  
21 ~~licensees to the use of surety bonds.~~

22  
23 ~~(g) In lieu of the security prescribed in this section, an applicant or~~  
24 ~~a licensee may deposit with the [superintendent] cash, or alternatives to cash~~  
25 ~~acceptable to the [superintendent], in the amount of the required security.~~  
26 ~~The principal amount of the deposit may be released to the applicant or~~  
27 ~~licensee only upon written authorization of the [superintendent] or on the~~  
28 ~~order of a court of competent jurisdiction.~~

29 ~~**Source:** Arizona Money Transmitter Act Section 6-1205; President's Commission Act~~  
30 ~~Section 8.~~

31 ~~and maintain an action on behalf of the claimant. The bond must be~~  
32 ~~payable to a person injured by the wrongful act, omission, default, fraud, or~~  
33 ~~misrepresentation of a licensee or an authorized delegate or employee of the~~  
34 ~~licensee in the conduct of its business as a licensee or to the State for the~~  
35 ~~benefit of the [superintendent] and of the person injured. Only one bond is~~

1 ~~required of a licensee irrespective of the number of officers, directors,~~  
2 ~~locations, employees, or authorized delegates of the licensee.~~

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

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

13 ~~(f) A security must remain effective for as long as the [superintendent]~~  
14 ~~specifies but no less than [five] years after the licensee ceases its money~~  
15 ~~services business in this State. However, the [superintendent] may permit the~~  
16 ~~security to be reduced or eliminated before that time to the extent that the~~  
17 ~~amount of the licensee's payment instruments outstanding in this State is~~  
18 ~~reduced. The [superintendent] may permit a licensee to substitute another form~~  
19 ~~of security acceptable to the [superintendent] for the security effective at~~  
20 ~~the time the licensee ceases to be a money services business in this State.~~

21 ~~**Source:** President's Commission Act Section 8; Delaware Code, Chapter 27,~~  
22 ~~Section 2714.~~

23 ~~**Reporter's Note:** As discussed at the Drafting Committee's initial meeting in~~  
24 ~~October 1997, irrevocable letters of credit provide an alternative for~~  
25 ~~licensees to the use of surety bonds.~~

26 ~~(g) In lieu of the security prescribed in this section, an applicant or~~  
27 ~~a licensee may deposit with the [superintendent] cash, or alternatives to cash~~  
28 ~~acceptable to the [superintendent], in the amount of the required security.~~  
29 ~~The principal amount of the deposit may be released to the applicant or~~  
30 ~~licensee only upon written authorization of the [superintendent] or on the~~  
31 ~~order of a court of competent jurisdiction.~~

32 ~~**Source:** Arizona Money Transmitter Act Section 6-1205; President's~~  
33 ~~Commission Act Section 8.~~ **Reporter's Note**

34 ~~**Reporter's Note:** Bonding or~~ **The bond and** net worth requirements are safety and soundness

measures designed to protect the public, but also to deter companies that have questionable solvency or business practices from entering the market. The bond requirement serves as a barrier to entry for financially unstable companies. Alternatives to the bond Alternatives, requirement, however, are provided ~~to the bond requirement~~ in the form of cash or ~~cash alternatives.~~ letters of credit. Licensees may also be permitted to deposit specified liquid assets in the amount of the bond. The Drafting Committee ~~will need to strike~~ has attempted a balance between the goals of safety and soundness and ~~also~~ of providing open access to businesses ~~who~~ that wish to enter the money ~~services market.~~  
~~-market.~~

~~Some Observers have queried how claimants may obtain cash in the event of a problem with the licensee meeting its obligations. The Drafting Committee may wish to consider whether additional guidance should be provided concerning security devices.~~

transmission market, recognizing that decisions as to the final dollar amounts will need to reflect the particular fiscal needs and concerns of different states.

### SECTION 203. ISSUANCE OF LICENSE.

(a) Upon the filing of an application under this ~~article,~~ [article], the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which ~~the must be borne by the applicant.~~ applicant must bear. The [superintendent] may issue a license ~~under this article to an applicant under this~~ article to an applicant [article] if the [superintendent] finds that all of the following conditions ~~are met:~~ have been fulfilled:

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

(2) the competence, experience, character, and general fitness of the executive officers, directors, and controlling persons, ~~and any proposed management personnel~~ indicate that it is in the interest of the public to permit ~~each of them to participate in the money services business of the licensee,~~ the applicant to engage in money transmission;  
and

\_\_\_\_\_ (3) the applicant has paid the ~~required license and~~ requisite application and license fees.

\_\_\_\_\_ (b) The [superintendent] shall approve or deny an application for an original license within ~~+120+~~ 120 days after ~~ana complete~~ application is ~~filed and is complete.~~ filed. The [superintendent] for a good cause may extend the ~~period for good cause.~~ 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 ~~that is denied a~~ whose application is denied ~~a license~~ by the [superintendent] under this ~~article~~ [article] may appeal from the denial within ~~+30+~~ 30 days after receipt of the ~~written~~ notice of the denial in a hearing before the ~~administrative~~ [superintendent] pursuant to the [administrative law judge] pursuant to the [state administrative procedure act].

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

### Reporter's Note

~~Reporter's Note: At the February 1998 Drafting Committee meeting, the Drafting Committee~~ The Drafting Committee has previously inquired as to whether states ~~had have~~ mandatory time frames in which the ~~regulator~~ superintendent must respond to license applications. The Money Transmitters' Regulators Association ~~representative~~ ("MTRA") supplied the Drafting Committee with sample statutory provisions that included mandatory time frames for response to a license application. ~~In Tennessee, the time period is 180 days rather than 120.~~ Based on existing state practice, the Drafting Committee decided on a 120-day response period. The MTRA Model Legislation Outline recommends a 120-day time period. The extension for "good cause" comes from the Maine Act to Regulate Money Transmitters and Amend Consumer Credit Laws, 32 M.R.S.A. Section 6109(2).

~~SECTION 204. RENEWAL OF LICENSE.~~

1       ~~-LICENSE.~~

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

6       ~~-date.~~

7       ~~(b) The [superintendent], by rule, shall establish an annual fee for~~  
8 ~~renewal of a license under this article.~~

9       ~~-article.~~

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

15       ~~-contain:~~

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

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

24 ~~**Reporter's Note:** One Observer has noted that this information should be~~  
25 ~~reported on a quarterly basis because timely response is critical with respect~~  
26 ~~to loss prevention. To the extent that an issuer of payment instruments is~~  
27 ~~unable to meet its obligations, the regulator needs to have quick access to~~  
28 ~~such information. Therefore, the Drafting Committee may want to consider~~  
29 ~~shifting the requirement to quarterly rather than annual reporting.~~

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

34               ~~(4) a list of the licensee's investments; and~~

35               ~~(5) a list of the locations in this State at which either the~~  
36 ~~licensee or an authorized delegate engage in the business.~~

1       ~~(d) The [superintendent] shall notify in writing a licensee under this~~  
2 ~~article that has not filed a renewal report or paid its renewal fee by the~~  
3 ~~renewal date and has not been granted an extension of time to do so by the~~  
4 ~~[superintendent] that its license has been suspended. The licensee has [30]~~  
5 ~~days after the date of receipt of the notice of suspension to file a renewal~~  
6 ~~report and to pay the renewal fee plus [\$100] for each day the renewal form~~  
7 ~~and application are not received by the [superintendent]. If the licensee does~~  
8 ~~not so file and pay within [30] days after the date of receipt of the notice~~  
9 ~~of suspension, the license is permanently revoked.~~

10 ~~Source: Model Act Regulating Money Transmitters, Section 11.~~

11 ~~Reporter's Note: The alternative to a provision which outlines the contents of~~  
12 ~~an annual renewal report is for the regulator to prescribe the contents of a~~  
13 ~~renewal application by regulation. The Model Money Transmitters~~ **SECTION**

#### 14 **204. RENEWAL OF LICENSE.**

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

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

22 ~~annual financial statement~~ (1) a copy of the licensee's most recent audited  
23 annual financial statement or, if the licensee is a wholly owned subsidiary of another  
24 corporation, the most recent audited consolidated annual financial statement of the parent  
25 corporation or the licensee's most recent audited consolidated annual financial statement;

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

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

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

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

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

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

### **Reporter's Note**

20 ~~Licensing and Regulation Act contains a provision which takes this~~  
21 ~~approach. The current renewal provisions in subparagraph c have been modified.~~  
22 ~~Both the Drafting Committee and Observers noted~~**The Drafting Committee decided** that  
23 it was too cumbersome to have a hearing provision for failure to renew a license. The Drafting  
24 Committee decided that a preferable alternative was for the license to expire if not renewed in a  
25 timely fashion. The licensee, however, ~~shall~~**will** have 30 days to cure its failure to renew its  
26 license. ~~Additionally, some Observers noted that Section 306(2) (Alternative 2)~~  
27 ~~which was contained in the February 1998 draft was a useful provision. This~~

1 ~~Section included a~~ As part of the renewal process, Article 2 licensees are required to submit  
2 additional information to the superintendent as a means of appraising the safety and soundness of  
3 the business.

4 ~~penalty of \$100 per day for late filing of a renewal application. Current~~  
5 ~~Section 203 has been modified to include such a penalty.~~

6 **SECTION 205. FEES.**

7 ~~SECTION 205. APPLICATION LICENSE AND FEES. A non-refundable application~~  
8 ~~fee of [\$1,000] and a license fee of [\$3,000](a) A nonrefundable application fee of~~  
9 ~~[\$2,000] and a license fee of [\$2,000] must accompany an application for a license under this~~  
10 ~~article-[article].~~ The license fee must be refunded if the application is denied.

11 (b) An annual renewal fee of [\$2,000] must accompany a license renewal report.

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

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

15 **Reporter's Note**

16 This section provides for an initial license application fee as well as for renewal fees and  
17 fees for applications for a change in control. This section leaves the final amount to be charged  
18 for each procedure to be determined by each State.

19 **SECTION 206. NET WORTH.** A licensee under this [article] shall maintain a net worth  
20 in liquid assets of at least [\$100,000] plus [\$10,000] for each location at which the licensee or an  
21 authorized delegate engages in the business, not to exceed [\$500,000].

22 **Source:** President's Commission Act Section 8.

23 **Reporter's Note:** ~~The Drafting Committee decided to omit any references to~~  
24 ~~license fees being placed in a separate fund for the exclusive use of the~~  
25 ~~Superintendent for the administration and enforcement of the [Act].~~

26 ~~SECTION 206. NET WORTH. A licensee under this article shall maintain a~~  
27 ~~net worth in liquid assets of at least [\$100,000] plus [\$10,000] for each~~  
28 ~~location at which the licensee or an authorized delegate engages in the~~  
29 ~~business, not to exceed [\$500,000].~~  
30



~~Source: President's Commission Act Section 8.~~

~~Reporter's Note: An alternative to a general net worth requirement is to provide varying net worth requirements for different types of money services businesses. For example, Section 36a-604 of the Connecticut Money Order and Travelers Check Licensees Act requires that check sellers and money transmitters requires that each licensee that issues money orders must have a net worth of at least \$100,000. Issuers of travelers checks must have a net worth of at least \$1 million.~~

### ~~ARTICLE 3~~

#### ~~LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS~~

~~Reporter's Note: At the October 1998 Drafting Committee meeting, it was agreed that licensing under Article 4 (formerly Part 4) of the Act would be limited to those check cashers and currency exchangers who are not authorized delegates of licensees under Article 3 (formerly Part 3) of the Proposed Act. In other words, check cashers who serve as authorized delegates of money transmitters or stored value providers would not have to obtain a separate license for their check cashing activities.~~

~~The Drafting Committee should consider whether the current licensing regime set forth in Article 3 will create any material differences for check cashers who are authorized delegates as opposed to check cashers who are not authorized delegates (and thus required to obtain a license) with respect to the level of recordkeeping and reporting required of both entities.~~

~~As a general matter, the Drafting Committee should consider whether it might be useful to use a different term for licensing under Article 4 that will differentiate between the two different licensing schemes in the Proposed Act. Some Observers have suggested the term "license" for money transmitters and stored value providers and the term "registration" for check cashers and currency exchangers.~~

#### ~~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 may not engage for consideration in check cashing or currency exchange without first obtaining a license under this article.~~

~~(b) A person licensed under this article may not engage directly in money transmission, or sell, issue, or provide payment instruments, but the person may act as an authorized delegate of a person licensed under Article 2.~~

~~(c) An applicant for a license under this article must apply in writing, under oath, and in the form prescribed by the [superintendent]. The application must include the following:~~

~~(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) the complete addresses of other locations in this State at which the applicant proposes to engage in check cashing or currency exchange including other limited stations and mobile locations;~~

~~(4) a document confirming that the requirement for net worth as set forth in Section 305 has been or will be satisfied;~~

~~(5) a description of the source of funds to be used for check cashing and currency exchange; and~~

~~(6) other information the [superintendent] reasonably requires with respect to the applicant, but not more than the [superintendent] may require under Article 2.~~

~~**Source:** Florida Money Transmitters' Code Sections 560.304 and 305.~~

~~**Reporter's Note:** At the February 1998 drafting meeting, Observers noted that check cashers should be treated differently than money transmitters with respect to licensing, bonding and net worth in particular. Check cashers and currency exchangers provide customers with funds immediately and therefore do not need the same type of bond or security devices. Existing state legislation makes a distinction between check cashers and money transmitters with respect to information provided to regulators (e.g., audited versus unaudited financial statements) and the level of bond and net worth required for check cashiers. The Drafting Committee decided to include separate licensing provisions in this draft as an alternative to a unified licensing system as contained in the February 1998 draft. Currency exchangers have also been included in this Section. As stated previously, Florida and Maine are examples of states that have grouped check cashers and currency exchangers together for purposes of licensing requirements.~~

~~A new provision has been added to require that check cashers provide regulators with information about the source of their funds. This is a concern to regulators and to law enforcement officials who want to ensure that the cash used in such a business are not derived from money laundering or other illegal activity. If check cashers who are authorized delegates are exempt from the licensing provisions of Article 3, the Drafting Committee should consider whether the source of funds requirement should be moved to another Section of the Proposed Act and applicable to all money services businesses.~~

#### ~~**SECTION 302. ISSUANCE OF LICENSE.**~~

~~(a) Upon the filing of an application under this article, the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [superintendent] may conduct an on site investigation of the applicant, the reasonable cost of which must be borne by the applicant. The [superintendent] may issue a license under this article to an applicant if the [superintendent] finds that all of the following conditions are met:~~

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

~~(2) the competence, experience, character, and general fitness of~~

~~the officers, directors, and controlling persons, and any proposed management personnel indicate that it is in the interest of the public to permit each of them to participate in the money services business of the licensee; and~~

~~(3) the applicant has paid the required license and application~~**Note**

Net worth requirements, in combination with bonding/security and permissible investment requirements, are a means of ensuring that a money transmitter has sufficient resources to honor its obligations to customers. As stated in the Prefatory Note, only Article 2 licensees are subject to net worth requirements. Check cashers and currency exchangers provide funds immediately to customers; therefore there is no risk of non-payment. Net worth requirements are a means of screening an applicant, at the time of their initial entry into the money-services business, as to their ability to meet their obligations.

**SECTION 207. PAYMENT INSTRUMENT IDENTIFICATION.** A payment instrument sold by a licensee directly, or indirectly through an authorized delegate, must bear the name of the licensee and a unique, consecutive number clearly stamped or imprinted on the instrument.

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

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

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

7 (4) a description of the source of moneys to be used for check cashing; and

8 (5) other information the [superintendent] reasonably requires with respect to the  
9 applicant, but not more than the [superintendent] may require under [Article] 2.

10 **Source:** Arizona Money Transmitter Law Section 6-1203; President's Commission Act Section  
11 7; Florida Money Transmitters' Code Section 560.205.

### 12 **Reporter's Note**

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

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

1        **SECTION 302. ISSUANCE OF LICENSE.**

2        (a) Upon the filing of an application under this [article], the [superintendent] shall  
3 investigate the applicant's financial condition and responsibility, financial and business  
4 experience, character, and general fitness. The [superintendent] may conduct an on-site  
5 investigation of the applicant, the reasonable cost of which the applicant must bear. The  
6 [superintendent] may issue a license to an applicant under this [article] if the [superintendent]  
7 finds that all of the following conditions have been fulfilled:

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

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

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

13 ~~(b) The [superintendent] shall approve or deny an application for an original~~  
14 ~~license within [120] days after an application is filed and is complete. The~~  
15 ~~[superintendent] may extend the period for good cause. (b) The~~

16 [superintendent] shall approve or deny an application for an original license within 120 days  
17 after a complete application is filed. The [superintendent] for a good cause may extend the  
18 period. The [superintendent] shall notify the applicant of the date on which the application is

19 determined to be complete. If the application is not approved or denied within the period  
20 allowed for approval, the application is deemed approved and the [superintendent] shall issue the  
21 license under this [article] effective as of the first business day after expiration of the period.

22 ~~(c) An applicant that is denied a license by the [superintendent] under~~  
23 ~~this article may appeal the denial within [30] days after receipt of the~~  
24 ~~written notice of the denial in a hearing before the [administrative law~~  
25 ~~judge] pursuant to the [state administrative procedures act].~~

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

~~Reporter's Note: At the February 1998 Drafting Committee meeting, the Drafting Committee inquired as to whether states had mandatory time frames in which the regulator must respond to license applications. The MTRA representative supplied the Drafting Committee with sample statutory provisions that included mandatory time frames for response to a license application. In Tennessee, the time period is 180 days rather than 120. The MTRA Model Legislation Outline recommends an 120 day time period. The extension for "good cause" comes from the Maine Act to Regulate Money Transmitters and Amend Consumer Credit Laws, 32 M.R.S.A. Section 6109(2).~~

### ~~SECTION 303. RENEWAL OF LICENSE.~~

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

~~(b) The [superintendent], by rule, shall establish an annual fee for renewal of a license under this article —~~

~~(c) A licensee shall pay an annual fee for the renewal of a license. The licensee 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 contain:~~

~~(1) a description of each material change to information submitted by the licensee on 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 at which either the licensee or an authorized delegate of the licensee engage in the business.~~

~~(d) The [superintendent] shall notify in writing 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 the date of receipt of the notice of suspension to file a renewal report and to pay the renewal fee plus [\$100] for each day the renewal form and application are not received by the [superintendent]. If the licensee does not so file and pay within [30] days after the date of receipt of the notice of suspension, the license is permanently revoked.~~

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

3 ~~**Reporter's Note:** The alternative to a provision which outlines the contents of~~  
4 ~~an annual renewal report is for the regulator to prescribe the contents of a~~  
5 ~~renewal application by regulation. The Model Money Transmitters Licensing and~~  
6 ~~Regulation Act contains a provision which takes this approach. The current~~  
7 ~~renewal provisions in subparagraph c have been modified. Both the Drafting~~  
8 ~~Committee and Observers noted that it was too cumbersome to have a hearing~~  
9 ~~provision for failure to renew a license. The Drafting Committee decided that~~  
10 ~~a preferable alternative was for the license to expire if not renewed in a~~  
11 ~~timely fashion. The licensee, however, shall have 30 days to cure its failure~~  
12 ~~to renew its license. Additionally, some Observers noted that Section 306(2)~~  
13 ~~(alternative 2) which was contained in the February 1998 draft was a useful~~  
14 ~~provision. This Section included a penalty of \$100 per day for late filing of~~  
15 ~~a renewal application. Current Section 302 has been modified to include such a~~  
16 ~~penalty.~~

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

20 **Source:** Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code Section 45-7-  
21 210.

### 22 **Reporter's Note**

23 See the Reporter's Note accompanying Section 202.

### 24 **SECTION 303. RENEWAL OF LICENSE.**

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

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

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

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

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

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

#### 11 **Reporter's Note**

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

#### 19 **SECTION 304. FEES.**

20 ~~**SECTION 304. APPLICATION AND LICENSE FEE.** A non-refundable~~  
21 ~~application fee of [\$1,000] and a license fee of [\$3,000] must~~  
22 ~~accompany an application for a license under this article.~~(a)A  
23 nonrefundable application fee of [\$2,000] and a license fee of [\$2,000] must accompany an  
24 application for a license under this [article]. The license fee must be refunded if the application  
25 is denied.

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



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

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

4                               **Reporter's Note**

5 See the Reporter's Note accompanying Section 205.

6                               **ARTICLE 4**

7                               **LICENSING OF CURRENCY EXCHANGERS**

8       **SECTION 401. APPLICATION FOR LICENSE.**

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

12       (b) A person licensed under this [article] may not engage directly in money transmission  
13 but the person may act as an authorized delegate of a person licensed under [Article] 2.

14       (c)     A person licensed under this [article] may also engage in the business of check  
15 cashing without obtaining a separate license under [Article] 3.

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

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

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

22       (3) complete addresses of other locations in this State where the applicant  
23 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 exchange; and  
2 (5) other information the [superintendent] reasonably requires with respect to the  
3 applicant, but not more than the [superintendent] may require under [Article] 2.

#### 4 **Reporter's Note**

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

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

#### 20 **SECTION 402. ISSUANCE OF LICENSE.**

21 (a) Upon the filing of an application under this [article], the [superintendent] shall  
22 investigate the applicant's financial condition and responsibility, financial and business  
23 experience, character, and general fitness. The [superintendent] may conduct an on-site  
24 investigation of the applicant, the reasonable cost of which by the applicant must bear. The  
25 [superintendent] may issue a license to an applicant under this [article] if the [superintendent]  
26 finds that all of the following conditions have been fulfilled:

27 (1) the applicant has complied with Section 401;  
28 (2) the competence, experience, character, and general fitness of the executive  
29 officers, directors, and controlling persons indicate that it is in the interest of the public to permit  
30 the applicant to engage in currency exchange; and

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

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

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

12 **Source:** Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code Section 45-7-  
13 210.

14 **Reporter's Note**

15 See the Reporter's Note accompanying Section 202.

16 **SECTION 403. RENEWAL OF LICENSE.**

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

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

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

4 ~~Reporter's Note: The Drafting Committee decided to omit any references to~~  
5 ~~license fees being placed in a separate fund for the exclusive use of the~~  
6 ~~Superintendent for the administration and enforcement of the [Act].~~  
7

8 ~~SECTION 305. NET WORTH. A licensee under this article shall maintain a net~~  
9 ~~worth in liquid assets of at least [\$10,000] for each location at which~~

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

12 ~~check cashing or currency exchange and at least [\$2,500] for each mobile~~  
13 ~~location or limited facility.~~

14 ~~Source: Connecticut Code Section 36a-581(e)-(6).~~ (c) The [superintendent], in a record,  
15 shall notify a licensee under this [article] that has not filed a renewal report or paid its renewal  
16 fee by the renewal date, and has not been granted an extension of time to do so by the  
17 [superintendent], that its license has been suspended. The licensee has 30 days after receipt of  
18 the notice of suspension in which to file a renewal report and to pay the renewal fee plus \$100  
19 for each day thereafter the renewal form and application are not received by the [superintendent].

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

### 21 Reporter's Note

22 See the Reporter's Note accompanying Section 204. The Drafting Committee decided to  
23 ~~Reporter's Note: As Observers noted at the February 1998 meeting, check~~  
24 ~~cashers are required to have much lower net worth and bond requirements. This~~  
25 ~~is due primarily to the fact that~~ require ~~check cashers and currency exchangers~~  
26 ~~provide customers with funds immediately unlike money transmitters and payment~~  
27 ~~instrument sellers. Check cashers are required to maintain anywhere from~~  
28 ~~\$5,000 in liquid assets per location up to \$50,000 (New~~ to renew their licenses  
29 biennially rather than annually. Because check cashers and currency exchangers pose no safety  
30 and soundness concerns, the superintendent does not have a need to ~~Jersey).~~ ~~Other states~~  
31 ~~also require that the check casher maintain an "adequate" bond (e.g.,~~  
32 ~~Massachusetts).~~  
33

1 ~~ARTICLE 4~~ examine renewal reports on an annual basis for these businesses. The  
2 superintendent, however, will have the authority to conduct an on-site examination if the check  
3 cashier or currency exchanger engages in money-laundering activity or violates a provision of the  
4 Act.

5 **SECTION 404. FEES.**

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

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

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

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

13 **Reporter's Note**

14 See the Reporter's Note accompanying Section 205.

15 **ARTICLE 5**

16 **AUTHORIZED DELEGATES**

17 ~~SECTION 401.~~ **SECTION 501. RELATIONSHIP BETWEEN LICENSEES AND**  
18 **AUTHORIZED DELEGATES.**

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

23 (b) An authorized delegate shall remit all ~~funds~~ money owing to the licensee in  
24 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 ~~{superintendent's} action.~~ 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:** ~~Section 401 (formerly Section 501 in the February 1998 draft) contains substantial revisions. The following provisions were omitted:~~

- ~~• the requirement that the licensee maintain a specific net worth for each authorized delegate which it uses;~~
- ~~• the requirement that the superintendent must grant written authorization for the use of sub-delegates;~~
- ~~• the imposition of treble damages on an authorized delegate for failure to remit all money owing to the licensee in a timely fashion; and~~
- ~~• the statement that an authorized delegate is not liable for any obligation imposed on a licensee with respect to business for which it is a delegate.~~

#### 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.

#### ~~SECTION 402.~~ SECTION 502. SCOPE OF AUTHORIZED DELEGATE'S

**ACTIVITY.** An authorized delegate may not ~~knowingly~~ intentionally engage in ~~activity~~ which the business that is outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity for which the authorized delegate is as ~~provided in Section 105(d).~~ licensed under [Article] 2, 3, or 4. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money ~~s~~ net of fees received from money transmission.

**Source:** Model Act Regulating Money Transmitters Section 19 (with modifications).

1 **Reporter's Note**

2 Similar to Section 501, Section 502 further provides that an authorized delegate is only  
3 authorized to perform those money services that it is authorized to perform pursuant to its  
4 contract with the licensee. To the extent that the delegate wishes to perform activities falling  
5 outside the scope of its contract, the delegate is the sale, delivery, or provision required  
6 to obtain its own license under the Act. This section also imposes a trust for the benefit of the  
7 licensee for moneys received by the delegate from the sale of the licensee's products or services.  
8 The imposition of a trust is a safety and soundness measure designed to protect the funds that  
9 are paid by consumers to the payment instruments or money received delegate for the  
10 purchase of a money order or for transmission.

11 ~~SECTION 403.~~ **SECTION 503. UNAUTHORIZED ACTIVITIES.** A person may not  
12 engage in conduct as an authorized delegate of a person that is not licensed under this [Act]. A  
13 person that engages in that conduct is engaging in the business to the same extent as if the person  
14 were the principal.

15 **Source:** Arizona Money Transmitter Act Section 6-1218; President's Commission Act Section  
16 10.

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

22 ~~ARTICLE 5.~~

23 ~~EXAMINATIONS, REPORTS, AND~~ **Note**

24 This section provides that an authorized delegate may only be a delegate for a licensee.  
25 Should the licensee lose its license, the delegate will be considered to act in its own capacity as if  
26 the delegate were a licensee itself. This section may trigger potential civil and criminal liability  
27 pursuant to Sections 805 and 806.

28 **ARTICLE 6**

29 **EXAMINATIONS; REPORTS AND OTHER RECORDS**

30 ~~SECTION 501.~~ **SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.**

31 (a) The [superintendent] may conduct an annual examination of a licensee or of any of its  
32 authorized delegates upon 45 days' notice in a record to the  
33 licensee. If the licensee or authorized delegate is engaging in an unsafe or unsound practice or  
34

1 has violated or is violating this [Act] or a rule adopted or an order issued under practice, this  
2 [Act], the [superintendent] may examine the licensee or its authorized delegate without having  
3 given notice.

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

9 **Source:** Model Act Regulating Money Transmitters Section 14 and Florida Money Transmitters'  
10 Code Section 560.118(1)(a).

#### 11 Reporter's Note

12 ~~Reporter's Note: The previous subsection (b) has been merged into~~  
13 ~~subsection (a) with respect to the examination of~~ This section provides the  
14 superintendent with general authority to conduct on-site supervisory exams of licensees and their  
15 authorized delegates. In the February 1998 draft an additional modification has  
16 been made. Previously, This provision is essential to ensure the safety and soundness of  
17 licensees and enable the superintendent to examine a licensee's books and records in the event  
18 that it is suspected of money laundering or any other violation of the Act. Subsection (a)  
19 permits the superintendent to examine a licensee or its delegates without advance notice if the  
20 licensee is engaging in an unsafe or unsound practice or has violated the Act. Previously, this  
21 section stated that the superintendent had to have a reason to believe that the licensee or  
22 authorized delegate was engaging in an unsafe or unsound practice. ~~Some Observers have~~  
23 ~~noted~~ It was noted, however, that this is an ambiguous ~~term~~ standard that may hinder the  
24 superintendent's ability to examine licensees and delegates in a timely fashion (i.e., because  
25 licensee will be able to challenge the examination). ~~Some Observers have~~ Additionally, it was  
26 noted that superintendents have not abused this authority where it has been given to them by  
27 statute. Furthermore, some regulators have observed that resource constraints provide a natural  
28 check on abuse of examination authority. As with several other authority.

29 ~~provisions in this Proposed Act, the Drafting Committee and Observers need to~~  
30 ~~further consider the appropriate balance between industry concerns and the~~  
31 ~~needs of the regulator and law enforcement.~~

32 Subsection (b) allows the superintendent to waive an annual on-site examination for  
33 licensees. It gives the superintendent flexibility in dealing with reputable licensees. For  
34 example, if a licensee has been licensed for several years, has maintained adequate financial  
35 resources, and has been cooperative with regulators, the superintendent may determine that



annual examinations are not necessary. The waiver also conserves financial resources of the superintendent.

~~SECTION 502.~~ **SECTION 602. JOINT EXAMINATIONS.**

(a) An on-site examination of books, ~~records,~~ accounts, ~~and documents~~ documents, and other records listed in Section ~~505~~ 605 may be conducted in conjunction with representatives of other ~~state~~ state agencies or agencies of another ~~state~~ State or of the federal government as determined by the [superintendent]. In lieu of an examination, the [superintendent] may accept the examination report of an agency of this State or of another ~~state~~ State or of the federal government or a report prepared by an independent licensed or certified public accountant. A joint examination or an acceptance of an examination report is not a waiver of the [superintendent's] authority to conduct an examination as provided by law. A joint report or a report accepted under this subsection is an official report of the [superintendent] for all purposes.

(b) Information obtained during an examination under this [Act] may be disclosed only as provided in Section ~~509-~~ 608.

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

**Reporter's ~~Note:~~ Note**

The use of joint examinations is an important feature of the ~~Proposed~~ Act that will reduce some of the increased ~~finance~~ costs that may be incurred as a result of licensing and ~~regulation-~~ regulation. Many states already engage in joint examinations of major money-services businesses or allow the submission of reports generated by another regulator in ~~SECTION 503-~~ lieu of an on-site examination. This is another provision designed to conserve financial resources.

**SECTION 603. REPORTS.**

(a) A licensee shall file with the [superintendent] within ~~45~~ 45 days after the end of each ~~[fiscal quarter] a consolidated financial statement including a balance sheet, income and expense statements, and a~~ fiscal quarter a current list of all authorized

delegates, responsible individuals, and locations ~~within this State which have been~~  
~~added or terminated by the licensee within the [fiscal quarter].~~ in this State.

The licensee ~~shall~~ must state or include the name and street address of each location and  
authorized delegate.

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

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

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

~~(3) the licensee's inability to pay its debts as they mature;~~  
~~(4)~~ (3) the cancellation, interruption, or non-renewal of the licensee's bond, letter of  
credit; or other security;

~~(5) a felony~~ (4) an [indictment], prosecution, or conviction of the licensee or of  
an executive officer, director, or controlling ~~person, responsible individual, or~~  
~~authorized delegate of the licensee~~ person of a felony related to activities regulated  
under this [Act] or involving ~~money laundering or unlawful activity specified by the~~

~~[superintendent] by rule.~~ a violation of state or federal money laundering laws; or

~~(c) A licensee that does not file a report required by this section by the~~  
~~time designated for filing the report or does not include prescribed~~  
~~information in the report shall pay a penalty of [\$100] for each day that the~~  
~~report is not so filed or is incomplete, unless the [superintendent], for good~~  
~~cause, reduces the amount to be paid.~~ (5) an [indictment], prosecution, or

conviction of an authorized delegate of a felony of which a licensee has knowledge related to

activities regulated under this [Act] or involving a violation of state or federal money laundering laws.

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

#### Reporter's ~~Note:~~ Note

Reports are essential to the proper regulation of problem delegates or licensees. Although on-site examinations are authorized, the reporting requirements provide a cost efficient mechanism for ~~regulators~~superintendents and industry members alike. Certain significant events must be reported immediately, including a money-~~immediately including a money-~~laundering allegation against a delegate. ~~At the February 1998 meeting, Observers noted that it would be~~The Drafting Committee, after consultation with Observers, decided that quarterly reporting was only necessary with respect to changes in authorized delegates. Furthermore, annual audited financial statements are only required for Article 2 licensees (as this relates once again to the safety difficult for check cashers to produce detailed financial reports on a quarterly basis. Another time period may be desirable. Alternatively, the Drafting Committee should consider whether the contents of reports should be prescribed by regulation. and soundness of money transmitters and their financial solvency). All licensees are required to file renewal reports pursuant to Articles 2, 3 and 4.

#### ~~SECTION 504.~~ SECTION 604. CHANGE OF CONTROL.

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

\_\_\_\_\_ (b) A licensee whose ~~shares~~voting securities or voting interests are traded on a ~~national~~an organized securities exchange shall give the [superintendent] written notice of a proposed change of control within [15] days after learning of the proposed change of control.

\_\_\_\_\_ (c) A licensee whose ~~shares~~voting securities or voting interests are not traded on a ~~national~~an organized securities exchange shall give the [superintendent] written notice of a proposed change of control at least ~~+30+~~30 days before the date of the proposed change of control.

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

6 | \_\_\_\_\_(e) The [superintendent] ~~may deny~~shall approve a request for approval under subsection  
7 | (a) if, after investigation, the [superintendent] determines that the person or group of persons  
8 | requesting approval ~~does not have~~has the competence, experience, character, and general  
9 | fitness to operate the licensee or controlling person in a lawful and proper manner and that the  
10 | interests of the public ~~may~~will not be jeopardized by the change of control.

11 | \_\_\_\_\_(f) This section does not apply to the following persons or transactions:

12 | \_\_\_\_\_(1) a registered dealer that acts as an underwriter or member of a selling group in  
13 | a public offering of the voting securities or voting interests of a licensee or controlling person of  
14 | a licensee;

15 | \_\_\_\_\_(2) a person that acts as a proxy for the sole purpose of voting at a designated  
16 | meeting of the security holders or holders of voting interests of a licensee or controlling person  
17 | of a licensee;

18 | \_\_\_\_\_(3) a person that acquires control of a licensee or controlling person of a licensee  
19 | by devise or descent;

20 | \_\_\_\_\_(4) a person that acquires control as a personal representative, custodian,  
21 | guardian, conservator, or trustee, or ~~other~~as an officer appointed by a court of competent  
22 | 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 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 ~~the~~ proposed transaction. If the [superintendent] determines that the person ~~will~~would not be a controlling person, the [superintendent] shall enter an order to that effect and the proposed person and transaction ~~are~~will is not be subject to the requirements of subsections (a) through (e).

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

**Reporter's Note:** ~~In February 1998, the Drafting Committee objected to Section 504 dealing with change in control. The previous provision required prior written approval from the superintendent before acquisition of a money services business. The current provision requires notice rather than prior approval in all instances (i.e., both for publicly held companies and other entities).~~

~~**SECTION 505. BOOKS, RECORDS, ACCOUNTS, AND DOCUMENTS.**~~

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

- ~~(1) a record of each payment instrument sold;~~
- ~~(2) a record of each payment instrument cashed;~~
- ~~(3) a general ledger posted at least monthly containing all assets, liability, capital, income, and expense accounts;~~
- ~~(4) settlement sheets received from authorized delegates;~~
- ~~(5) bank statements and bank reconciliation records;~~
- ~~(6) records of outstanding payment instruments;~~

~~(7) records of each payment instrument paid within the [three]-  
year period;~~

~~(8) a list of the names and addresses of all of the licensee's  
authorized delegates; and~~

~~(9) any other books, records, accounts, and documents that may be  
prescribed by the [superintendent] by rule.~~

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

~~(c) Books, records, accounts, and documents may be maintained outside of  
this State if they are made accessible to the [superintendent] on [seven]-  
days' written notice.~~

~~**Source:** Model Act Regulation Money Transmitters Section 15 (with  
modifications).~~

~~**Reporter's Note:** At the October 1998 Drafting Committee meeting, the Drafting  
Committee decided to combine the more general reporting provision of Section  
605 (Alternative 1 — Florida Money Transmitters' Code Section 560.310.) and  
the more detailed reporting requirements of Section 605 (Alternative 2 which  
is Section 15 of the Model Act Regulating Money Transmitters). Some Observers  
noted that regulators need guidance as to the types of books and records which  
should be retained by licensees. Additionally, the Drafting Committee felt  
that the statutory prescription for recordkeeping should merely be a minimum  
and that additional books and records might be required by regulation if  
needed. Therefore, the current Section 605 is an amalgamation of the previous  
two provisions.~~

~~As noted in the September 1998 Draft, most check cashing and currency exchange  
legislation simply states that the licensee must maintain books and records as  
required by regulation. Unlike money transmission statutes, the actual details  
of the recordkeeping are done through regulation. For check cashers, minimum  
books and records often include:~~

- ~~• a daily record of checks cashed, including for personal  
checks in excess of \$500 and government or business checks  
in excess of \$1,000;~~
- ~~• the date of the transaction, the date of the check, the  
check number, the name and location of the payor bank;~~
- ~~• the name of the drawer of the check, the name (and  
identification) of the person negotiating the check; and~~
- ~~• the amount of the check and the fee charged for cashing the  
check.~~

~~See, e.g., Georgia Code Chapter 80-3-1-0.5 Ohio also states in its Check  
Cashing Act that relevant rules shall require check cashers to maintain a  
daily cash reconciliation that summarizes daily activity, reconciles cash on  
hand, separately reflects cash received from the sale of checks, and a general  
ledger, etc. See Ohio Check Cashing Act, Ohio Revised Code Section 1315.27.~~

~~**Selected Issue:** For how long should a licensee have to retain its books and  
records? At present, Section 605 suggests a period of three. Some Observers  
who represent regulatory and law enforcement participants have suggested that  
the retention period should be no shorter than the relevant criminal statute  
of limitations. Additionally, some suggestion has been made that in states  
with racketeering statutes, it should be no longer than the criminal or the  
civil racketeering statute of limitations.~~

~~SECTION 506. RECORDS OF TRANSACTIONS.~~

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

~~(b) For each transaction involving the receipt of funds from a customer, a licensee or an authorized delegate that receives the money shall maintain a written record of the transaction. The record may be reduced to an electronic or optical medium. The record must contain the name of the licensee, the street address of the location at which the money was received, the name and street address of the customer if reported to the licensee or authorized delegate, and the approximate date of the transaction. The records collectively must contain the name or other information from which the [superintendent] can determine the identity of the employees of the licensee or authorized delegate that engaged in a transaction, and the amount of the transaction. The information required by this section must be available from the licensee or authorized delegate for at least [three] years after the date of the transaction.~~

~~Source: President's Commission Act Section 15.~~

~~Reporter's Notes: The Style Committee has noted that Section 506 appears redundant with the inclusion of Section 505. Section 505 is a general recordkeeping provision and Section 506 relates to transaction records. The Drafting Committee and Observers should consider whether both sections are necessary or if modifications should be made to Section 506 to eliminate any overlap. Both Sections have currently been retained because they serve different functions.~~

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

The Committee and Observers debated the issue of whether the superintendent should require applicants to provide personal financial information under Section 604 about controlling persons, such as executive officers of the acquiring company. It was noted, however, that it should not be a mandatory requirement because many executive officers at larger publicly traded

1 companies would object to such a requirement as an unnecessary invasion of privacy, since the  
2 financial well-being of the company would bear no connection to the officer's personal wealth.  
3 The superintendent retains the discretion to request such information for smaller entities where  
4 the superintendent needs more information to make an assessment of net worth and financial  
5 capability (i.e., individual proprietors who wish to acquire control of a money-services business).

6 **SECTION 605. BOOKS, ACCOUNTS, DOCUMENTS, AND OTHER RECORDS.**

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

10 (1) a record of each payment instrument sold;

11 (2) a record of each payment instrument cashed;

12 (3) a general ledger posted at least monthly containing all asset, liability, capital,  
13 income, and expense accounts;

14 (4) bank statements and bank reconciliation records;

15 (5) records of outstanding payment instruments;

16 (6) records of each payment instrument paid within the three-year period;

17 (7) a list of the last known names and addresses of all of the licensee's authorized  
18 delegates; and

19 (8) any other books, accounts, documents, and other records that may be  
20 prescribed by the [superintendent] by rule.

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

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

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



**Reporter's Note**

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

~~SECTION 507.~~ **SECTION 606. MONEY LAUNDERING REPORTS.**

(a) A licensee ~~must comply with~~ shall file with the [attorney general] all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C Section 5311, 31 C.F.R. Part 103, and other federal and state laws pertaining to money laundering.

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

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

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

**Reporter's Note**

Money-services businesses are required to file relevant reports required under federal or state law with respect to suspected money laundering. This provision is meant to achieve two purposes. First, it requires licensees and their authorized delegates to comply with federal and state anti-money-laundering reporting requirements. By making this requirement explicit in a state statute, money-services businesses will be put on notice of their reporting obligations.

1 Second, the superintendent has a basis for taking enforcement actions against non-compliant  
2 licensees and delegates.

3 ~~Reporter's Note:~~ ~~Observers at the October 1998 Drafting Committee~~  
4 ~~meeting suggested this language. This Section~~This section also permits licensees to  
5 comply with ~~State~~state reporting requirements by filing the appropriate federal ~~anti-money~~  
6 ~~laundering reports. anti-money-laundering reports, and thereby avoid duplicative filing.~~ For  
7 most jurisdictions, federal data and reports are available through FinCEN's Gateway computer  
8 system. According to information the Drafting Committee received from the National  
9 Association of Attorneys General, seven states receive such data on a computer tape from  
10 FinCEN under a memorandum of understanding.

11 ~~Another Observer has suggested that the Proposed Act should encapsulate all of~~  
12 ~~the provisions of the Model Financial Transaction Reporting Act, a~~  
13 ~~complementary statute to the President's Commission Model Law on Money~~  
14 ~~Transmitters. A copy of this model act has been included as an appendix to the~~  
15 ~~Third Draft cover memo for the Drafting Committee's reference. As an~~  
16 ~~alternative, the Observer has also suggested that Section 507 be deleted~~  
17 ~~entirely with reference made to the Model Financial Transaction Reporting Act~~  
18 ~~(with changes to reflect the federal forms required and the data available to~~  
19 ~~State and local authorities through shared databases).~~

22 ~~Some of the suggested weaknesses with the current provision are that no~~  
23 ~~specific violation is created for non-compliance and that there is no~~  
24 ~~violation for licensees or authorized delegates who either evade~~  
25 ~~currency/transaction reporting requirements or who structure transactions so~~  
26 ~~as to avoid reporting requirements. The Drafting Committee needs to consider~~  
27 ~~whether structuring and evasion of reporting requirements should be specific~~  
28 ~~violations under the Proposed Act and whether such violations will have civil~~  
29 ~~and/or criminal liabilities attached to them.~~

30 ~~Selected Issue:~~ ~~Should the Draft NDP Act be more explicit and detailed~~  
31 ~~concerning the types of transactions for which money services businesses must~~  
32 ~~file and maintain reports for State regulators (as opposed to federal~~  
33 ~~reports)?~~

34 ~~Discussion:~~ ~~Approximately ten states require that a money services~~money-services  
35 ~~business comply with all federal and state money laundering~~money-laundering and currency  
36 transaction reporting laws. State laws typically replicate the federal law and require that cash  
37 transactions in excess of \$10,000 be reported to a state authority, as well as to the U.S. Treasury.

38 Most of the state reporting ~~legislation~~law does not specifically address ~~money~~  
39 ~~services~~money-services businesses (but may apply to ~~money services~~money-services  
40 businesses by implication). Several states, including Colorado, Connecticut, Idaho, Indiana and  
41 Oklahoma, require financial institutions to file suspicious activity reports concurrently with  
42 Federal and ~~State~~state authorities. Arizona has its own suspicious activity form for financial  
43 institutions. Suspected ~~money laundering~~money-laundering activities are reported to Arizona's  
44 Attorney General on a one-page form. Georgia ~~states~~provides that each financial institution  
45 ~~shall~~must keep a record of currency transactions in excess of \$10,000 and that those reports  
46 ~~shall~~must be filed with ~~this State~~the state within 15 days of the ~~transaction. The~~  
47 ~~Georgia Department of Banking~~transaction.

48 ~~and Finance, however "may promulgate regulations that permit currency~~  
49 ~~transaction reports filed by financial institutions with federal agencies~~  
50 ~~pursuant to requirements of federal law to satisfy the currency transaction~~  
51 ~~filing requirements . . . provided that the department . . . will have access~~

1 to the currency transaction reports filed with the federal agencies." Georgia  
2 Financial Institutions Code Section 7-1-912.

3 ~~Selected Issue:~~ Should the proposed Act also include specific prohibitions  
4 against evading currency reporting requirements (under either Federal or State  
5 law) and also against the structuring of transactions? (i.e., the division of  
6 a transaction that would trigger currency reporting or Bank Secrecy Act  
7 reporting requirements into two or more transactions that are not reportable).  
8 Some states explicitly prohibit such actions as part of their criminal code or  
9 as part of their money transmission regulations.

10 Georgia, for example, prohibits the evasion of reporting requirements and also  
11 structuring. It requires financial institutions (including money services  
12 businesses) to keep records of currency transactions in excess of \$10,000. In  
13 addition to recordkeeping requirements, Georgia also has provisions relating  
14 to the evasion of reporting requirements. For example, it is a misdemeanor for  
15 a person to:

- 16 • ~~cause or attempt to cause a financial institution to fail to~~  
17 ~~file a currency transaction report;~~
- 18 • ~~cause or attempt to cause a financial institution to file a~~  
19 ~~report that contains a material omission or misstatement of~~  
20 ~~fact; or~~
- 21 • ~~structure or assist in structuring, or attempt to structure~~  
22 ~~or assist in structuring, any currency transaction with one~~  
23 ~~or more financial institutions~~

24 See Georgia Code 7-1-912(d), 7-1-915(a).

25 ~~SECTION 508. ELECTRONIC~~ **ELECTRONIC FILING OF RECORDS.** The [superintendent],  
26

27  
28 by rule, may order that an application, report, or record that is required to be filed pursuant to  
29 [this Act] be filed electronically.

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

### 31 **Reporter's ~~Note:~~ Note**

32 This provision is included in a series of proposed amendments to the Florida Money  
33 Transmitters' Code that have been drafted by the Florida State Department of Banking. These  
34 amendments have not been put before the Florida Legislature. At the October 1998 ~~Drafting~~  
35 ~~Committee~~drafting meeting, there was a general sentiment that there needed to be some  
36 provision for the submission of records electronically, as well as in writing.

37  
38 ~~SECTION 509.~~ **SECTION 608. CONFIDENTIALITY OF RECORDS.**

39 \_\_\_\_\_ (a) Except as otherwise provided in this [Act], the records of the [superintendent] relating  
40 to licensees and authorized delegates are not public records and are not open to inspection by the  
41 public. Neither the [superintendent], except as otherwise provided in subsections (b) through  
42 (d), nor an employee of the [superintendent] may disclose information obtained in the discharge

of official duties to a person not employed by the ~~[superintendent]~~. [name of appropriate state department or regulatory agency].

(b) The [superintendent] may disclose confidential information pertaining to a licensee

~~or~~ and authorized delegate to ~~the following persons:~~

~~(1) a representative of a federal agency insuring accounts of the licensee or authorized delegate;~~ (1) the attorney general of this State;

(2) a representative of a federal or state agency ~~or~~ or a foreign country having regulatory or supervisory authority over the activities of the licensee ~~or~~ and authorized delegate if the representative is permitted to and ~~does~~, upon request of the [superintendent], disclose similar information respecting licensees ~~or~~ and authorized delegates under its regulation or supervision and who ~~states~~ avows in writing under oath that the representative will maintain the confidentiality of the information; and

~~(3) the attorney general of this State;~~

~~(4)~~ (3) to a federal, state, or [county] grand jury in response to a lawful ~~subpoena,~~ and subpoena.

~~(5) to the [auditor general] of this State for the purposes of conducting an audit authorized by law.~~

(c) The [superintendent] may:

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

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

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

~~statistical information.~~

       (d) This section does not preclude the disclosure of information ~~that is~~ admissible in evidence in a civil or criminal action, suit, or proceeding brought by or at the request of the [superintendent] to enforce or prosecute a violation of this [Act] or a rule adopted or an order issued under this [Act].

**Source:** President's Commission Act Section 24 (with modifications).

~~**Reporter's Note:** Some Observers have noted that this provision (which specifies which agencies may receive information) is too restrictive for effective law enforcement. The Drafting Committee should consider whether a more general confidentiality provision is appropriate.~~

## ~~ARTICLE 6~~ ARTICLE 7

### PERMISSIBLE INVESTMENTS

#### ~~SECTION 601.~~ 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, sold, or provided~~ and funds 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 ~~which~~ that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.

~~**Source:** President's Commission Act Section 14 (with modifications).  
**Reporter's Note:** All references to net carrying value which were included in former Section 701 have been omitted. The Drafting Committee and Observers both felt that this term was ambiguous.~~

~~**{ALTERNATIVE 1}**~~

~~**SECTION 602. TYPES OF PERMISSIBLE INVESTMENTS.** Without limitation, the following investments are permissible under Section 601:~~

- ~~(1) cash, certificates of deposit, or other obligations of a domestic financial institution or insured by the Federal Deposit Insurance Corporation;~~
- ~~(2) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the Federal Reserve System;~~
- ~~(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;~~
- ~~(4) an investment security that is an obligation of the United States or any department, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;~~
- ~~(5) a share in a money market mutual fund; interest bearing bill, note, or bond; debentures; a share traded on a national securities exchange or a national over the counter market; or a mutual fund primarily composed of one or more investments as described in this section;~~
- ~~(6) a demand borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are listed on a national securities exchange; and~~
- ~~(7) a receivable that is due a licensee from its authorized delegate pursuant to a contract which is not past due or doubtful of collection; and~~
- ~~(8) any other investment or security approved by the [superintendent].~~

~~**Source:** Model Act Regulating Money Transmitters Section 3.  
**Reporter's Note:** the Drafting Committee previously noted that the investments listed under (f) and (g) may be too risky to be included as permissible investments. More generally, Drafting Committee members and Observers expressed concern about the broad nature of permissible investments and the fact that there were no specific percentage limitations on any one type of investment. Industry Observers noted, however, that the definition as provided is typical of what is currently permitted in many states. A second alternative has been provided below.~~

~~(ALTERNATIVE 2)~~ (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 602. SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.**

~~(a) Without limitation,~~ (a) Except to the extent otherwise limited by the [superintendent] pursuant to Section 701, the following investments are permissible under Section ~~601.~~ 701:

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

~~(2) bankers' acceptances and bills of exchange that are eligible for purchase by member banks of the Federal Reserve System;~~

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

~~(4) an investment security that is an obligation of the United States or its agencies or instrumentalities or an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or governmental subdivision, agency, or instrumentality thereof; and~~

~~(5) a share for a certificate issued by an open end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 [15 U.S.C. Sections 80a-1 et seq.], and the portfolio of which is restricted by the management company's~~

1 ~~investment policy to investments specified in paragraphs (1) through (4).~~

2 ~~(b) The following investments are permissible under Section 601, but~~  
3 ~~only to the extent specified:~~

4 ~~(1) interest bearing bills, notes, bonds, or debentures of a~~  
5 ~~person the shares of which are traded on a national securities exchange or on~~  
6 ~~a national over the counter market if the aggregate investments under this~~  
7 ~~paragraph do not exceed 20 percent of the total permissible investments of a~~  
8 ~~licensee and a licensee does not at one time have investments under this~~  
9 ~~paragraph in any one person aggregating over 10 percent of the licensee's~~  
10 ~~total permissible investments;~~

11 ~~(2) shares of a person traded on a national securities exchange or~~  
12 ~~a national over the counter market or shares for certificates issued by an~~  
13 ~~open end management investment company that is registered with the Securities~~  
14 ~~and Exchange Commission under the Investment Company Act of 1940 and the~~  
15 ~~portfolio of which is restricted by the management company's investment policy~~  
16 ~~to shares of a person traded on a national securities exchange or a national~~  
17 ~~over the counter market if the aggregate investment under this paragraph does~~  
18 ~~not exceed 20 percent of the total permitted investments of a licensee and a~~  
19 ~~licensee does not at one time have investments under this paragraph in any one~~  
20 ~~person aggregating over 10 percent of the licensee's total permissible~~  
21 ~~investments;~~

22 ~~(3) a demand borrowing agreement made to a corporation or a~~  
23 ~~subsidiary of a corporation whose securities are traded on a national~~  
24 ~~securities exchange, if the aggregate of the amount of principal and interest~~  
25 ~~outstanding under demand borrowing agreements under this paragraph does not~~  
26 ~~exceed 20 percent of the total permitted investments of a licensee and a~~  
27 ~~licensee does not at one time have principal and interest outstanding under~~  
28 ~~demand borrowing agreements under this paragraph with any one person~~  
29 ~~aggregating over 10 percent of the licensee's total permitted investments; or~~

30 ~~(4) receivables that are due to a licensee from its authorized~~  
31 ~~delegates pursuant to a contract which are not past due or doubtful of~~  
32 ~~collection if the aggregate amount of investments in receivables under this~~



~~paragraph does not exceed 20 percent of the total permitted investments of a licensee and a licensee does not at one time have investments in receivables under this paragraph with any one person aggregating over 10 percent of the licensee's total permitted investments; or~~

~~(5) 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 601.~~

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

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

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

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

(6) a share or a certificate issued by an open-end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 [15 U.S.C. Sections 80a-1 et. seq.], and the portfolio of which is restricted

1 by the management company's investment policy to investments specified in paragraphs (1)  
2 through (4).

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

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

11 (2) a share of a person traded on a national securities exchange or a national over-  
12 the-counter-market or a share or a certificate issued by an open-end management investment  
13 company that is registered with the Securities and Exchange Commission under the Investment  
14 Company Act of 1940, and the portfolio of which is restricted by the management company's  
15 investment policy to shares of a person traded on a national securities exchange or a national  
16 over-the-counter-market, if the aggregate investments under this paragraph does not exceed 20  
17 percent of the total permissible investments of a licensee and a licensee do not at one time have  
18 investments under this paragraph in any one person aggregating more than 10 percent of the  
19 licensee's total permissible investments;

20 (3) a demand borrowing agreement made to a corporation or a subsidiary of a  
21 corporation whose securities are traded on a national securities exchange if the aggregate of the  
22 amount of principal and interest outstanding under demand borrowing agreements under this  
23 paragraph does not exceed 20 percent of the total permissible investments of a licensee and a

1 licensee does not at one time have principal and interest outstanding under demand borrowing  
2 agreements under this paragraph with any one person aggregating more than 10 percent of the  
3 licensee's total permissible investments; and

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

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

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

#### 10 **Reporter's Note**

11 At the October 1998 drafting meeting, the Drafting Committee expressed some concern about  
12 the types of permissible investments that have been included in model legislation, as well as in  
13 existing state money-transmission statutes. As stated in the Prefatory Note, money transmitters  
14 have to maintain investments that are ~~Note~~ equal to the aggregate face amount of all their  
15 outstanding funds transfers and payment instrument obligations (on a dollar for dollar basis).  
16 ~~The Drafting Committee felt that the provisions were more substantive in nature~~  
17 ~~as to what constituted a permissible investment and therefore have been moved~~  
18 ~~from the definitions to Article 6.~~

19 ~~At the October 1998 Drafting Committee meeting, Drafting Committee~~  
20 ~~Members expressed some concerns about former Subsections 1-102(a)(26)(c)-(g)~~  
21 ~~which permitted investments without~~ observed that certain investments appeared more  
22 risky than others — especially in the absence of any limitations or caps on percentage of the  
23 licensee's portfolio invested in any of these items ~~in any of the following~~  
24 ~~items+items.~~

25  
26 The items that the Committee identified as potentially problematic were:

27 ~~X~~• shares in a ~~money market~~ money-market mutual fund, interest-bearing bills or notes or  
28 bonds, debentures or stock traded on any national securities exchange or on a national  
29 over-the counter-market, or mutual funds primarily composed of one or more investments  
30 as described in this ~~Section~~ section;

31 ~~X~~• a demand borrowing agreement made to a corporation or a subsidiary of a corporation  
32 whose capital stock is listed on a national exchange; and

- 33 • receivables that are due to a licensee from its authorized delegates pursuant to a contract  
34 which are not past due or doubtful of collection.

1 |     The Drafting Committee ~~felt as did some Observers~~thought that these types of  
2 | investments posed higher levels of risk to the licensee and ultimately to the public than was  
3 | appropriate for ~~money services~~money-services businesses. Industry Observers noted,  
4 | however, that such investments were commonly included in state ~~legislation~~law. In fact, the  
5 | MTRA outline lists such investments as permissible, though it states that loans should not  
6 | exceed ~~10%~~10 percent of the net worth of a licensee, and the amount of such ~~laws~~loans as a total  
7 | percentage of permissible investments may be subject to legislation.  
8 |

9 |     The current list of permissible investments is an attempt to balance the concerns of  
10 | regulators for safety and soundness and of industry participants who have concerns about their  
11 | ability to properly conduct business. The categories of investments listed in ~~current 602(b)~~  
12 | ~~(Alternative 2)~~Section 702(b) permit the type of investments that had previously raised  
13 | concerns. The main difference in the new Section ~~602(b)~~702(b) and current practice is that the  
14 | aggregate cap on such investments is set at 20 percent of the licensee's portfolio. Additionally,  
15 | the licensee e may not invest in more than 10 percent of any one person with respect to these same  
16 | investment categories. This balances the need to allow licensees to have flexible and diverse  
17 | options for investment, but also limits the aggregate amount that a licensee can invest in these  
18 | riskier categories.  
19 |

20 |     Receivables, in particular, was one category that received considerable attention by members of  
21 | the Committee. Industry Observers, however, explained that there was a practical reason for  
22 | including receivables as a category of permissible investments. They noted that the practice of  
23 | including receivables as permissible investments had become a necessity due to the use of  
24 | automated money-order dispensers. Typically, money orders are sold at sales outlets through  
25 | automated dispensers. The automated dispenser immediately records the sale of the money order  
26 | and notifies the money transmitter. This real-time "notification" immediately triggers the  
27 | obligation of a money transmitter to retain permissible investments for the money order sold on a  
28 | dollar for dollar basis. However, while the obligation to maintain investments is triggered at the  
29 | time of sale, there is a lag of time until the sales outlet actually remits funds to the money  
30 | transmitter. For the time period between ~~The Drafting Committee may wish to consider~~  
31 | ~~the~~sale and remittance of the funds that the sales outlet has received, the money transmitter  
32 | needs to treat those "receivables" as part of its permissible investment ~~provisions contained~~  
33 | ~~in states where money services businesses are engaged in higher volumes of~~  
34 | ~~business such as California, New York, Florida, and~~portfolio. Previously, authorized  
35 | delegates had notified a money transmitter of the number of money orders sold at the same time  
36 | that it remitted a check for the funds ~~Texas as a basis for comparison.~~  
37 |

38 |     ~~ARTICLE 7~~received.  
39 |

## 40 |                                    ARTICLE 8

## 41 |                                    **ENFORCEMENT**

1 ~~SECTION 701.~~ **SECTION 801. ORDERS TO CEASE AND DESIST; POWERS OF**  
2 **SUSPENSION AND REVOCATION.**

3 \_\_\_\_\_ (a) After notice and hearing, the [superintendent] may issue an order to cease and desist,  
4 suspend, or revoke a license, or order a licensee to revoke the designation of an authorized  
5 delegate if:

6 \_\_\_\_\_ (1) the licensee ~~fails to~~does not comply with this [Act] or a rule adopted or an  
7 order issued under this [Act];

8 \_\_\_\_\_ (2) the licensee or authorized delegate of the licensee engages in fraud,  
9 misrepresentation, deceit, or gross negligence;

10 \_\_\_\_\_ (3) an authorized delegate violates the Bank Secrecy Act, a state or federal anti-  
11 money-laundering statute, or a rule adopted or an order issued under this [Act] as a result of the  
12 licensee's ~~negligent~~willful failure to supervise the authorized delegate or as a result of the  
13 willful misconduct or willful blindness of the licensee;

14 \_\_\_\_\_ (4) the licensee is insolvent or suspends payment of its obligations, or makes an  
15 assignment for the benefit of its ~~creditors, or admits in writing its inability to pay~~  
16 ~~its debts as they become due;~~ creditors;

17 \_\_\_\_\_ (5) the licensee does not remove an authorized delegate after the [superintendent]  
18 issues and serves upon the licensee a final order setting forth a finding that the authorized  
19 delegate has violated this [Act];

20 \_\_\_\_\_ (6) the competence, experience, character, or general fitness of the licensee or  
21 authorized delegate or a controlling person of the licensee or authorized delegate indicates that it  
22 is not in the public interest to permit the person to engage in the ~~money services~~money-  
23 services business; or

~~(7) the licensee does not make a report required by this [Act]; or~~  
~~(8)~~ (7) the licensee engages in an unsafe or unsound practice.  
~~(b) In making the determination of~~ (b) In determining whether a person is  
engaging in an unsafe or unsound practice, the [superintendent] may consider the size and  
condition of the money ~~services business, transmitter,~~ the magnitude of the loss, the gravity  
of the violation of this [Act], and the previous conduct of the person involved.

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

### Reporter's Note

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

Some states provide more detailed standards for when a cease and desist order becomes  
effective. The Texas Currency Exchange Transportation and Transmission provisions of the  
Texas Finance Code provide that a cease and desist order takes effect on issuance if the Banking  
Commissioner finds a threat of immediate and irreparable harm to the license holder or the  
public. If no immediate or irreparable harm is found, the order is not effective before 10 days  
after the order is received. ~~The order must be served on the licensee, the licensee's~~  
~~board of directors and any offending principal. Texas Finance Code Section~~  
~~153-407.~~

Other state laws enumerate separate and specific grounds for the denial of a license or  
for revocation, suspension or restriction of a previously granted license. Florida, for example,  
lists a material misstatement of fact in an initial or renewal application, the loss of license in  
another jurisdiction (due to fraud or dishonest ~~dealing,~~ dealing) and criminal convictions  
involving fraud or dishonest dealing as grounds for license denial, suspension or non-renewal.  
See Florida Money Transmitters' Code Section ~~560.114(2)(a) — (c).~~ 560.114(2)(a)-(c).

~~**Selected Issue:** Should the cease and desist provisions include specific~~

reference to a licensee's books and records and also violations of the recordkeeping provisions of the Proposed Act?

**Reporter's Note:** The Drafting Committee received comments from Observers who noted that certain provisions of the October 1998 draft should not have been omitted from the February 1998 draft. These provisions (former Sections 1001(a)(3) and (5) in the October 1998 draft) permitted the superintendent to issue a cease and desist order against the licensee in the event that the licensee failed to "maintain, preserve and keep available for examination all books, accounts or other documents required by the [Act] or any rules or orders adopted pursuant to the [Act]" or if the "licensee has failed to comply with its recordkeeping and reporting requirements under the Act." The Drafting Committee previously felt that these provisions were included in current subparagraph (a)(1) which allows the Superintendent to issue a cease and desist order for any violation of the Act. Failing to maintain records or violating recordkeeping requirements would appear to constitute a violation of the Act. The Drafting Committee may want to consider, however, whether these provisions should be specifically included in the next draft.

**Selected Issue:** Subsection (b) concerning the factors to be considered when determining if an unsafe or unsound practice has occurred has been moved from the definition section of the Proposed Act at the suggestion of the Style Committee because it is a substantive provision. The Drafting Committee should consider whether such a provision properly belongs here or at some other place in the act.

~~SECTION 702.~~ **SECTION 802. AUTHORIZED DELEGATES; ORDERS TO CEASE AND DESIST.**

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

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

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

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

\_\_\_\_\_ (4) the financial condition of the authorized delegate jeopardizes the interests of the public in the conduct of the ~~money services business;~~ money-services business;

\_\_\_\_\_ (5) the authorized delegate is engaging in an unsafe or unsound practice; ~~or~~

\_\_\_\_\_ (6) the authorized delegate commits a felony.

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

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

~~(SUBSECTION (b) ALTERNATIVE 1)~~

~~(b) A licensee is responsible for conduct engaged in by an authorized delegate under the authority granted to it in the contract between the licensee and the authorized delegate if the licensee knew or should have known that the conduct violates this [Act] or a rule adopted or an order issued under this [Act] and the licensee willfully allowed the conduct to continue.~~

**Source:** Model Act Regulating Money Transmitters Section 10.

**Reporter's Note:** ~~Some criticism has been made about the limitations included in this provision. First, the licensee's responsibility for conduct of the authorized delegate is limited to actions relating to the contract between the licensee and its authorized delegates. Second, the licensee is only responsible for wrongful conduct of the delegate which it had knowledge of. Subparagraph (b) Alternative 2 is a proposed alternative which would eliminate these limitations. The issue is to what extent the Licensee should have incentives to monitor its delegates and to promote compliance with the Proposed Act.~~  
**Selected Issue:** ~~Subsection (b) concerning the factors to be considered when determining if an unsafe or unsound practice has occurred has been moved from the definition section of the Proposed Act at the suggestion of the Style Committee because it is a substantive provision. The Drafting Committee should consider whether such a provision properly belongs here or at some other place in the act.~~

~~(SUBSECTION (b) ALTERNATIVE 2)~~

~~(b) If an authorized delegate violates this [Act] or a rule adopted or an order issued under this [Act] as a result of the licensee's negligent failure to supervise or as result of the willful misconduct or willful blindness of the licensee, the licensee is responsible for the violation.~~

**Source:** ~~President's Commission Model Act Section 11(f); see also A.R.S. Section 6-1210(5).~~

**Reporter's Note:** ~~702(b) Alternative 1 places responsibility on the licensee for the conduct of the authorized delegate to the extent that the licensee knew of the delegate's misconduct or allowed it to continue. The Drafting Committee needs to consider whether scope of licensee liability and/or~~



1 ~~responsibility for authorized delegate conduct needs to be extended to willful~~  
2 ~~blindness or recklessness. Additionally, the Drafting Committee may consider~~  
3 ~~further defining how a licensee should supervise authorized delegates.~~

4  
5 ~~702(b) alternative 2 makes a licensee responsible for the actions of the~~  
6 ~~authorized delegate that are the result of the licensee's negligent failure to~~  
7 ~~supervise and/or willful misconduct. One Observer has made the following~~  
8 ~~suggestion: "The President's Commission Model Act and the Arizona statute~~  
9 ~~makes the licensee responsible for the conduct of its authorized delegates if~~  
10 ~~the conduct occurred as a result of a course of negligent failure to supervise~~  
11 ~~or as a result of the willful misconduct of the licensee."~~

12  
13 ~~(c) In making the determination of whether a person is engaging in an~~  
14 ~~unsafe or unsound practice, the [superintendent] may consider the size and~~  
15 ~~condition of the money services business, the magnitude of the loss, the~~  
16 ~~gravity of the violation, and the previous conduct of the person involved.~~

17 **~~Selected Issue:~~** ~~Subsection (c) concerning the factors to be considered when~~  
18 ~~determining if an unsafe or unsound practice has occurred has been moved from~~  
19 ~~the definition section of the Proposed Act at the suggestion of the Style~~  
20 ~~Committee because it is a substantive provision. The Drafting Committee should~~  
21 ~~consider whether such a provision properly belongs here or at some other place~~  
22 ~~in the act.~~

### 23 **Reporter's Note**

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

### 31 **SECTION ~~703.~~803. TEMPORARY ORDERS TO CEASE AND DESIST.**

32 ~~(a) Whenever \_\_\_\_\_~~ (a) If the [superintendent] determines that a violation of this [Act] or of a  
33 rule adopted or an order issued under this [Act] by a licensee or authorized delegate is likely to+  
34 cause immediate and irreparable harm to the licensee, its customers, or the ~~public,~~public as a  
35 result of the violation, or cause insolvency or significant dissipation of assets of the licensee+  
36 ~~weaken the condition of the licensee, or otherwise prejudice the interests of~~  
37 ~~consumers,~~ the [superintendent] may issue a temporary order requiring the licensee or  
38 authorized delegate to cease and desist from the violation. The order ~~shall become~~becomes  
39 effective upon service upon the licensee or authorized delegate.

~~(b) The~~ (b) A temporary order ~~shall remain~~remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section ~~701 or Section 702.~~801 or 802.

       (c) Within 10 days after a licensee or an authorized delegate is served with a temporary order to cease and desist, the licensee or authorized delegate may ~~apply to~~petition the [appropriate court], for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the temporary order pending the completion of an administrative proceeding pursuant to Section ~~701 or Section 702.~~801 or 802.

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

#### **Reporter's Note**

~~**Reporter's Note:** Some Observers had expressed concern~~There was some concern expressed at the October 1998 meeting, that the ~~Proposed~~ Act did not provide the superintendent with sufficient authority to deal with exigent situations through the use of expedited procedures. ~~New Section 703 attempts to provide~~Section 803 provides the superintendent with limited authority to issue temporary orders to cease and desist without ~~first going through~~prior notice and hearing procedures. ~~Drafting~~The superintendent, however, must have a reasonable belief that the licensee or its authorized delegate is engaging in an unsafe or unsound activity or is violating a provision of the Act, before invoking temporary powers.

~~Committee members should consider whether such a provision should be included separately or as part of the cease and desist provisions which are found in Sections 701 and 702.~~

~~**Selected Issue:** Should there be a similar provision which allows the superintendent to suspend a license prior to a hearing if he or she determines that such an action is in the public interest?~~

~~**SECTION 704.**~~ **SECTION 804. CONSENT ORDERS.** The [superintendent] may enter into a consent order at any time with a person to resolve a matter arising under this [Act]. A consent order must be signed by the person that it is issued to or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent

order need not constitute an admission by a person that this [Act] or a rule adopted or an order issued under this [Act] has been violated.

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

#### **Reporter's Note**

Section 804 gives the superintendent the ability to enter into a negotiated settlement with a money-services business with respect to alleged violations of the Act and potential disciplinary proceedings. The use of consent orders provides the superintendent with a flexible means of achieving enforcement goals while minimizing the administrative and fiscal burden of lengthy administrative proceedings and hearings.

#### ~~SECTION 705.~~ **SECTION 805.** CIVIL PENALTIES.

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

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

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

#### **Reporter's Note**

In addition to the ability to take disciplinary action against a money-services business or its delegates for violations of the Act, civil penalties provide another enforcement mechanisms aimed at deterring money laundering. As discussed at the first meeting of the Drafting Committee, civil penalties are preferred enforcement ~~note~~ mechanisms due to the commercial nature of the Act. The current Section ~~804~~805 was the second of two alternative ~~subparagraphs~~ included in the February 1998 draft. The first alternative capped the maximum civil penalty at \$100 per day per violation. The same provision also allowed licensees an

1 | opportunity to cure their violations. The Drafting Committee ~~felt~~decided that such a "cure"  
2 | provision eliminated much of the effectiveness of the civil money penalty provision. The second  
3 | alternative, which was retained in ~~this draft,~~the Act, has been modified. Previously, ~~there~~  
4 | ~~was it included~~ a reference to a fine ~~equaling an amount~~ equal to the gross business engaged in  
5 | connection with the violation. The Drafting Committee and Observers alike considered this too  
6 | imprecise a formula. Instead, a civil money penalty of \$1,000 per day ~~has been suggested.~~  
7 | ~~Additionally, former Section 804 (b) has been eliminated. This provision is~~  
8 | included. Additionally, the Committee eliminated former subsection 805 (b), which included a  
9 | separate fine of \$1,000 per day for engaging in ~~money services~~a money-services business  
10 | without a license. It was decided that this ~~was a per se~~was, by definition, a violation of  
11 | the ~~Proposed~~ Act and therefore did not need to be the subject of a ~~new act.~~separate provision.

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

19 | ~~Source: President's Commission Act Section 23.~~

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

23 | ~~Selected Issue: Should subsection (b) eliminated and subsection (a) amended to~~  
24 | ~~provide that a civil penalty may be assessed after the licensee if provided~~  
25 | ~~with notice and an opportunity for a hearing?~~

27 | ~~SECTION 706.~~ **SECTION 806. CRIMINAL PENALTIES.**

28 |        (a) A person that ~~knowingly~~intentionally makes a false statement, misrepresentation, or  
29 | false certification in an application, financial statement, book, ~~record,~~document, account,  
30 | customer receipt, report, or other ~~document~~record filed or required to be maintained under this  
31 | [Act] or that ~~knowingly~~intentionally makes a false entry or omits a material entry in such a  
32 | ~~document~~record is guilty of a [reference to state classification] felony.

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

1 (c) A person that ~~knowingly and willfully~~intentionally engages in any conduct for  
2 which a license is required under this [Act] without being licensed under this [Act] is guilty of a  
3 [reference to state classification] felony.

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

6 **Reporter's ~~Note:~~ Note**

7 General criminal penalties for all violations are typical of regulatory codes. False statements and  
8 other misrepresentations are at the core of the regulatory process and therefore are listed  
9 ~~separately.~~

10 separately. Although the Drafting Committee expressed some concern about the inclusion of  
11 criminal penalties in a civil licensing statute,

12 ~~SECTION 707. UNAUTHORIZED ACTIVITIES.~~

13 ~~(a) A person, other than a licensee or an authorized delegate, may not~~  
14 ~~engage in a money services business unless the person is excluded under~~  
15 ~~Section 104.~~

16 ~~(b) A person may not engage in conduct as an authorized delegate of a~~  
17 ~~person required to obtain a license under this [Act] but who is not so~~  
18 ~~licensed. The person that engages in that conduct becomes the principal and is~~  
19 ~~no longer an authorized delegate. The person is also liable to the holder or~~  
20 ~~remitter as a principal of a money services business.~~

21 ~~(c) The [superintendent] may issue a complaint and issue an order to~~  
22 ~~cease and desist against a person that engages in the business without a~~  
23 ~~license. The [superintendent] may also impose a civil monetary penalty under~~  
24 ~~Section 705.~~

25 ~~**Source:** Florida Money Transmitters' Code Section 560.125 (with modifications).~~

26 ~~**Reporter's Note:** The MTRA has observed that State regulators need authority to~~  
27 ~~deal with money services businesses that operate without a license. The Style~~  
28 ~~Committee has pointed out that Section 707 may be redundant given the~~  
29 ~~prohibitions against unlicensed activity in the Proposed Act.~~

31 **ARTICLE 8**Observers who represented law enforcement emphasized the need for criminal  
32 penalties in connection with serious violations of the Act. The Committee supports the inclusion  
33 of those provisions in Section 806 because they relate to very serious, specific and tangible  
34 violations of the Act.

35 **ARTICLE 9**

## ADMINISTRATIVE PROCEDURES

~~SECTION 801.~~ **SECTION 901.** ADMINISTRATIVE PROCEDURES. All administrative proceedings under this [Act] must be conducted in accordance with ~~the~~ ~~state~~ the state administrative procedure act].

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

### Reporter's ~~Note:~~ Note

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

~~SECTION 802.~~ **SECTION 902.** HEARINGS.

~~(a) The~~ (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 ~~holding~~ 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]~~ (b) The [superintendent], in a record, shall give a licensee or an applicant at least [10] ~~days written~~ days' notice of the time and place of a hearing ~~by registered or certified mail,~~ addressed to the licensee or applicant at its ~~last known~~ last known address.

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

### Reporter's ~~Note:~~ Note

Except for the issuance of temporary orders pursuant to Section ~~703,~~ 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. The President's Commission Act only refers to suspension, revocation and denial of licenses. Section 802 has been also been

1 extended further to include cease and desist authority and~~also~~ the ability to assess civil  
2 penalties.~~Part of the President's Commission Act text has been omitted.~~

3 ~~Any order of the [superintendent] suspending, revoking or denying a~~  
4 ~~license shall state the grounds it is based on and shall not be~~  
5 ~~effective until ten (10) days after written notice of the order has been~~  
6 ~~sent by registered mail or certified mail to the licensee or applicant~~  
7 ~~at its last known address. Any hearing required by this Section shall be~~  
8 ~~conducted on the record. Witnesses shall be sworn and evidence presented~~  
9 ~~to the [superintendent] shall be appropriately identified and preserved.~~  
10 ~~The [superintendent] is hereby granted subpoena powers to compel the~~  
11 ~~production of physical items and the attendance of witnesses. Any notice~~  
12 ~~required under this Section shall be deemed served on the third business~~  
13 ~~day after the [superintendent] mails it. A licensee may seek court~~  
14 ~~review of the [superintendent's] findings and order.~~

15 **Reporter's Note:** ~~The Former Section 1001 on Consumer Disclosure has been~~  
16 ~~eliminated. This provision previously required that "Every licensee and~~  
17 ~~authorized delegate shall provide each consumer of a money services business~~  
18 ~~transaction a toll free telephone number for the purpose of consumer~~  
19 ~~inquiries. In lieu of a toll free number, the licensee or authorized delegate~~  
20 ~~may provide the address and telephone number of the [superintendent]."~~

21 ~~The Drafting Committee decided to omit this provision as it placed a heavy~~  
22 ~~regulatory burden on the superintendent or regulator with respect to referrals~~  
23 ~~from licensees. Additionally, the Drafting Committee felt that this provision~~  
24 ~~might overlap with existing consumer protection legislation provisions. The~~  
25 ~~Proposed Act is not meant to repeal any existing consumer legislation.~~  
26  
27

## 28 ~~ARTICLE 9~~ARTICLE 10

### 29 ~~MISCELLANEOUS PROVISIONS~~MISCELLANEOUS PROVISIONS

#### 30 ~~SECTION 901.~~SECTION 1001. APPOINTMENT OF [SUPERINTENDENT] AS 31 AGENT FOR SERVICE OF PROCESS.

32 \_\_\_\_\_ (a) A licensee or a person that engages in the business without being licensed ~~is deemed~~  
33 ~~to have done both of the following under this [Act] is deemed to have:~~

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

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

38 \_\_\_\_\_ (b) Within [three] business days after service of process upon the [superintendent], the  
39 [superintendent] shall send by certified mail copies of all lawful process accepted by the  
40 [superintendent] as a person's agent to the person at its ~~last known~~last known address. Service

1 of process is complete [three] business days after the [superintendent] deposits the copies of the  
2 process in the United States mail.†

3 ~~Source: Model Act Regulating Money Transmitters Section 28.~~

4 ~~Reporter's Note: This Section is bracketed because some states do not allow~~  
5 ~~the secretary of state to accept service of process.~~

6  
7 ~~SECTION 902.~~ **SECTION 1002. UNIFORMITY OF APPLICATION AND**

8 **CONSTRUCTION.** In applying and construing this Uniform [Act], consideration must be

9 given to the need to promote uniformity of the law with respect to its subject matter among

10 States that enact it.

11 ~~Source: USL Drafting Manual.~~

12  
13 ~~SECTION 903. SEVERABILITY.~~ **SECTION 1003. SEVERABILITY CLAUSE.** If any

14 provision of this [Act] or its application to any person or circumstance is held invalid, the

15 invalidity does not affect other provisions or applications of this [Act] which can be given effect

16 without the invalid provision or application, and to this end the provisions of this [Act] are

17 severable.

18 ~~Source: USL Drafting Manual.~~

19  
20 ~~SECTION 904. EFFECTIVE DATE.~~

21 ~~Source:~~

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

23 ~~SECTION 905.~~ **SECTION 1005. SAVINGS AND TRANSITIONAL PROVISIONS.**

24 ~~Source:~~