

DRAFT

FOR DISCUSSION ONLY

UNIFORM MONEY SERVICES BUSINESS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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UNIFORM MONEY SERVICES BUSINESS ACT

With Reporter's Notes

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1 **ARTICLE 1**

2 **GENERAL PROVISIONS**

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

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

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

7 (2) "Authorized delegate" means a person designated by a licensee to provide
8 money services on behalf of the licensee.

9 (3) "Bank" means an institution organized under federal or state law that:

10 (A) accepts demand deposits or deposits that the depositor may withdraw for
11 payment to third parties or others by check or other similar means and is engaged in the business
12 of making commercial loans; or

13 (B) engages only in credit card operations, does not accept demand deposits or
14 deposits that the depositor may withdraw for payments to third parties or others by check or
15 similar means, does not accept any savings or time deposits less than \$100,000, maintains only
16 one office that accepts deposits and does not engage in the business of making commercial loans.

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

19 (5) "Check cashing" means accepting a payment instrument in exchange for money
20 delivered to the presenter of the instrument at the time and place of presentation without any
21 agreement specifying when the payment instrument will be submitted for collection.

22 (6) "Control" means:

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

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

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

8 (7) "Controlling person" means a person having control.

9 (8) "Currency exchange" means exchanging money of one government for money
10 of another government.

11 (9) "Currency exchanger" means a person who engages in currency exchange.

12 (10) "Engage in the business" means to engage for compensation more than 10
13 times in any twelve consecutive months in activities regulated under this [Act].

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

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

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

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

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

4 (16) "Money services " means money transmission, check cashing, or currency
5 exchange.

6 (17) "Money transmission" means the sale or issuance of a payment instrument, or
7 engaging in receiving money for transmission, or transmitting money within the United States or
8 to locations outside the United States.

9 (18) "Outstanding," with respect to a payment instrument, means issued or sold by
10 or for the licensee but not yet paid by or for the licensee.

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

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

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

21 (22) "Responsible individual" means an individual who is employed by a licensee
22 and has principal active managerial authority over the provision of money services by the licensee
23 in this State.

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

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

(25) "[Superintendent]" means the [state superintendent of banks or other senior state regulator].

(26) "Unsafe or unsound practice" means a practice or conduct by a money transmitter that creates the likelihood of material loss, insolvency, or dissipation of assets of the money transmitter, or otherwise materially prejudices the interests of its customers.

Source: 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.

Notes to this Draft: Several definitions have been amended in this Draft.

1. The definition of bank has been revised to more closely mirror the definition contained in the Federal Reserve Act to include "nonbank" banks (credit card banks).

2. The definition of "money services business" has been changed to "money services" in order to make the definition simpler and to provide for more clarity.

3. The definition of "check cashing" has been amended to specifically exclude entities that provide deferred deposit services for a fee. Such services are often referred to as "payday loans" whereby a customer receives money in exchange for a check that will be submitted for collection at a specified time in the **future**. The check is often to be presented at the time of the customer's next pay period (hence the reference to "payday"). It is believed that such services do not constitute check cashing but are rather a related service often regulated by separate statute.

1 4. The definition of "key shareholder" has been removed because the definition of "controlling
2 person" includes a key shareholder.

3 5. The definition of money transmission has been revised. Previously the definition included
4 language that stated that money transmission included transmitting money "by any means
5 including transmission by payment instrument, wire, facsimile, or electronic transfer." This
6 language appears to narrow the definition rather than provide a broader scope.

7 **Reporter's Notes**

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

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

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

35 4. "Engage in the business." Because the Act is intended to apply only to those entities engaged in
36 the money services business as a commercial enterprise, the current definition was added. The
37 definition of engage in the business is a modified version of the definition of "conduct the
38 business" included in the President's Commission on Model State Drug Laws, Model Money
39 Transmitter Licensing and Regulation Act ("President's Commission Act") Section 4(c); and the
40 President's Commission on Model State Drug Laws, Model Financial Transaction Reporting Act

1 Section 4(d). The commentary to the President's Commission Act states that "[c]onduct the
2 business' derives its meaning from federal tax law relating to deductions available to persons in the
3 business of various profit-seeking pursuits. Its application to federal gambling law, 18 U.S.C.
4 1955, provides useful case law examples."

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

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

14 7. "Money services." Money services is used to define a group of entities that engage in any of the
15 following activities: money transmission, sale of payment instruments (i.e., money orders or
16 traveler's checks or stored-value instruments), check cashing and currency exchange. The
17 definition focuses on the activities engaged in rather than the entity that engages in the activities.
18 The Drafting Committee decided to use an activity-based definition because different money
19 services may engage in one or more of these money services activities.

20 8. "Money transmission." Money transmission subsumes several activities or functions: the
21 transmission of funds as well as the sale or issuance of payment instruments and the sale or
22 issuance of stored-value instruments. Stored-value instruments, as defined in the Act, are treated
23 as payment instruments. The grouping of funds transmission and the sale or issuance of payment
24 instruments is consistent with existing state practice. The Drafting Committee has consolidated
25 related functions to simplify the Act.

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

33 The definition of payment instrument specifically excludes credit cards, vouchers, letters of credit
34 or instruments that are redeemable by the issuer in goods and services. These excluded payment
35 mechanisms are regulated under separate legislative provisions. Additionally, coupons and gift
36 vouchers are excluded as they are considered instruments "redeemable by the issuer in goods and
37 services."

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

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

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

34 **SECTION 103. EXCLUSIONS.** This [Act] does not apply to:

- 35 (1) the United States or a department, agency, or instrumentality thereof;
- 36 (2) the United States Postal Service;
- 37 (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 international
3 banking corporation, a branch of a foreign bank, a corporation organized pursuant to the Bank
4 Services Act, or a corporation organized pursuant to the Edge Act under the laws of a State or
5 the United States if the person does not issue, sell, or provide payment instruments through an
6 authorized delegate that is not such a person;

7 (5) electronic funds transfer of governmental 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 registered futures commission merchant under the federal commodities laws
16 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 federal
19 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;

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

5 (11) a person that engages in issuing, selling, or redeeming stored-value
6 instruments and that is subject by a state or federal banking supervisor to prudential and reporting
7 requirements similar to those required of licensees under this [Act] as determined by the
8 [superintendent].

9 **Reporter's Notes**

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

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

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

27 4. The proposed exclusion for broker-dealers arises from the fact that broker-dealers are already
28 subject to Bank Secrecy Act Reporting requirements and are highly regulated by the SEC.

29 5. The proposed exclusion for stored-value issuers, sellers or redeemers relates only to those
30 entities that are subject to oversight by a federal or state banking agency and which are subject to
31 safety and soundness regime that includes investment and capital requirements. Such entities
32 would already be regulated from a safety and soundness standpoint by banking regulators.

1 Because such entities will have to adhere to capital requirements and also have their investment
2 activity monitored and regulated, consumer interests should be protected.

3 Based on recommendations from the American Bar Association's Task Force on Stored Value,
4 the Committee decided to refine the exclusion for entities that issue stored-value instruments to
5 exclude those entities that are subject to regulation, supervision and examination by a state or
6 federal banking agency as long as the stored-value provider is subject to a safety and soundness
7 regime. See Letter from American Bar Association Task Force on Stored Value to David S.
8 Willenzik, ABA Advisor to the UMSBA Drafting Committee (March 23, 1999) (copy on file with
9 NCCUSL). Safety and soundness requirements would include minimum capital requirements and
10 restrictions on investments. The Committee felt that entities that were already subject to
11 regulatory oversight by a banking regulator and which had to comply with safety and soundness
12 requirements would not pose a risk with respect to consumers. Furthermore, the concern about
13 having information about the entity and its delegates would similarly be fulfilled because of
14 oversight from banking regulators.

15 **SECTION 104. LICENSE REQUIRED.**

16 (a) A person may not engage in money transmission without:

17 (1) a license under [Article] 2; or

18 (2) being an authorized delegate of a money transmitter

19 (b) A person may not engage in check cashing or currency exchange without:

20 (1) a license under either [Article] 3 or [Article] 4;

21 (2) a license as a money transmitter under [Article] 2; or

22 (3) being an authorized delegate of a money transmitter.

23 (c) A person not licensed under this [Act] or not an authorized delegate of a licensee is
24 engaged in providing money services if the person advertises those services, solicits to provide
25 those services, or holds itself out as providing those services , or engages in the business.

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

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

30 **Reporter's Note**

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

7 **ARTICLE 2**

8 **LICENSING OF MONEY TRANSMITTERS**

9 **SECTION 201. LICENSE REQUIRED.**

10 (a) A person licensed under this [article] or who is an authorized delegate of a person
11 licensed under this [article] may engage in money transmission.

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

15 **Source:** New

16 **Notes to this Draft:** Section 201 has been revised to describe more clearly the rights of persons
17 licensed under Article 2. Previously, the language of Section 201 was couched in the negative: "a
18 person may not engage in the business of money transmission . . . without first obtaining a license
19 under this [article]."

20 **SECTION 202. APPLICATION FOR LICENSE.**

21 (a) In this section, "material litigation" means litigation that, according to generally
22 accepted accounting principles, is considered significant to an applicant's or licensee's financial
23 condition.

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

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

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

2 (3) a description of any money services activities previously or presently engaged
3 in by the applicant, and the money services that the applicant seeks to provide in this State;

4 (4) a list of the applicant's proposed authorized delegates, and the locations in this
5 State where the applicant and its authorized delegates propose to provide money transmission or
6 other money services;

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

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

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

13 (c) If an applicant is a corporation, limited liability company, or partnership, the applicant
14 shall also provide:

15 (1) the date of the applicant's incorporation or formation and State or country of
16 incorporation or formation;

17 (2) if applicable, a certificate of good standing from the State or country in which
18 the applicant is incorporated or formed;

19 (3) a brief description of the structure or organization of the applicant, including
20 any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded
21 on a securities exchange;

1 (4) the legal and any fictitious name, business and residential addresses, and
2 employment, for the past ten years, of each executive officer, manager, director, or controlling
3 person of the applicant;

4 (5) material litigation and criminal convictions for the past ten years of each
5 executive officer, and controlling person that is an individual, of the applicant;

6 (6) a copy of the applicant's audited financial statements for the most recent fiscal
7 year and, if available, for the next preceding two years;

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

10 (8) if the applicant is a publicly traded entity, a copy of the most recent 10-K
11 report filed with the SEC;

12 (9) if the applicant is a wholly owned subsidiary of:

13 (A) a corporation publicly traded in the United States, audited financial
14 statements for the parent corporation for the current year or the parent corporation's most recent
15 10-K reports filed with the SEC; or

16 (B) a corporation publicly traded outside the United States, similar
17 documentation filed with the regulator of the parent corporation's domicile outside the United
18 States; and

19 (10) other information the [superintendent] reasonably requires.

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

(e) The [superintendent] may waive a requirement of subsections (a) through (c) or permit an applicant to submit substituted information in lieu of the required information.

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

Notes to this Draft: Section 202(c) has been revised to include corporations as well as other forms of business organizations such as limited liability companies and partnerships. The information required by legal persons that are not publicly held corporations would include the date of the applicant's formation (as opposed to incorporation), a certificate of good standing (if applicable), and a brief description of the structure of the applicant rather than the "corporate" structure of the applicant. Additionally, the license application will also require information about managers of an application in addition to executive officers, directors, and controlling persons.

At the October 1999 Drafting Committee meeting, the Committee decided to adopt Section 202(c)(8). As an alternative to the requirement that publicly traded corporations submit all filings made to the SEC, the corporate applicant is required to submit a copy of its most recent 10-K report filed with the SEC. This report is required pursuant to the Securities and Exchange Act of 1934 for exchange-traded securities and contains financial information and other details concerning the status of a publicly held company. Second, a new requirement has been included for applicants that are wholly owned subsidiaries of publicly traded corporations. These applicants are required to submit a copy of the parent's audited financial statement or its most recent 10-K report filed with the SEC or if it is a foreign corporation, any similar filings made with the foreign regulator of the corporation. See MTRA Model Legislation Outline Section IV(C)(5). Additionally, applicants must furnish information concerning material litigation and criminal convictions for the past ten rather than five years.

Reporter's Notes

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

As set forth in Articles 2, 3, and 4, separate licensing requirements are established for money transmitters and for check cashers/foreign currency exchangers. The superintendent's supervisory and enforcement powers, however, are the same for all money services businesses. The licensing requirement promotes one of the main goals of the Act: to create an appropriate regulatory framework to deter and eliminate the use of money services businesses as potential vehicles for money laundering. Only a handful of states have attempted to create a framework that links all money services businesses together within a statute, while recognizing the differences inherent in the various activities concerned. Florida and Arizona, for example, are two states that have enacted statutes that have uniform enforcement and penalty provisions for all money services

1 businesses, while retaining separate licensing and record keeping provisions for each type of
2 money service activity. The Drafting Committee chose this approach because, for law
3 enforcement purposes, the state superintendent and the Attorney General need general
4 enforcement powers with respect to each of the different entities as a means of prevention and
5 detection of money laundering. Therefore, the Act contains uniform enforcement provisions and
6 different licensing requirements for each type of activity.

7 The licensing application is the first point at which the state may protect the public by prohibiting
8 entry by those persons that would bring discredit on the industry, and the first source of
9 information for investigators and regulators in the event that there is future misconduct by a
10 licensee. The information requested from money transmitter applicants in Section 202 is the type
11 of information recommended by MTRA in Section IV of its Model Legislation Outline and also in
12 the Model Act Regulating Money Transmitters. The information concerning criminal convictions
13 and employment histories, as well as the identity of executive officers, key shareholders,
14 controlling persons and responsible individuals is designed to assist the superintendent in
15 determining whether the license applicant is a reputable business or whether there are any
16 suggestions that the business might be used for illegal purposes. Additionally, information relating
17 to the applicant's financial position (including information about net worth) is necessary in order
18 to determine whether an applicant will be able to meet its obligations with respect to any
19 obligations it might have (in connection with the sale of money orders, traveler's checks and
20 stored value and funds transfer).

21 **SECTION 203. SECURITY.**

22 (a) Except as otherwise provided in subsection (b), the following rules apply:

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

25 (2) If an applicant proposes to engage in the business at more than one location
26 through authorized delegates or otherwise, the amount of the security is increased by [\$10,000]
27 per location, not exceeding a total increase of [\$250,000].

28 (b) The [superintendent] may increase the amount of security required to a maximum of
29 [\$1,000,000] upon the basis of the impaired financial condition of a licensee, as evidenced by
30 reduction of net worth, financial losses, or other relevant criteria.

1 (c) Security must be in a form satisfactory to the [superintendent] and payable to the State
2 for the benefit of any claimant against the licensee to secure the faithful performance of the
3 obligations of the licensee with respect to money transmission.

4 (d) The aggregate liability on a surety bond may not exceed the principal sum of the bond.
5 A claimant against a licensee may maintain an action directly on the bond, or the [superintendent]
6 may maintain an action on behalf of the claimant.

7 (e) A surety bond must cover claims effective for as long as the [superintendent] specifies
8 but at least five years after the licensee ceases to provide money services in this State. However,
9 the [superintendent] may permit the amount of security to be reduced or eliminated before that
10 time to the extent that the amount of the licensee's payment instruments outstanding in this State
11 is reduced. The [superintendent] may permit a licensee to substitute another form of security
12 acceptable to the [superintendent] for the security effective at the time the licensee ceases to
13 provide money services in this State.

14 (f) In lieu of the security prescribed in this section, an applicant for a license or a licensee
15 may provide security in a form prescribed by the [superintendent].

16 **Source:** Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12
17 Transmitters of Money; A.R.S. Section 6-1205; President's Commission Act Section 8 (with
18 modifications).

19 **Notes to this Draft:** Section 203 has been revised and simplified. At the October 1999 Drafting
20 Committee meeting, the Committee decided to focus on the requirements for surety bonds in
21 particular, which are the most common form of security used by money transmitters. At the same
22 time, Section 203(g) provides the Superintendent with the flexibility to allow for other forms of
23 security that he deems acceptable.

24 **Reporter's Note**

25 The bond and net worth requirements are safety and soundness measures designed to protect the
26 public, but also to deter companies that have questionable solvency or business practices from
27 entering the market. The bond requirement serves as a barrier to entry for financially unstable
28 companies. Alternatives to the bond requirement, however, are provided in the form of cash or

1 letters of credit. Licensees may also be permitted to deposit specified liquid assets in the amount
2 of the bond. The Drafting Committee has attempted a balance between the goals of safety and
3 soundness and of providing open access to businesses that wish to enter the money transmission
4 market, recognizing that decisions as to the final dollar amounts will need to reflect the particular
5 fiscal needs and concerns of different states.

6 **SECTION 204. ISSUANCE OF LICENSE.**

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

13 (1) the applicant has complied with Sections 202, 203, and 206;

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

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

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

(c) An applicant whose application is denied by the [superintendent] under this [article] may appeal from the denial and request a hearing before the [superintendent] within [30] days after receipt of the notice of the denial.]

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

Reporter's Notes

The Drafting Committee has previously inquired as to whether states have mandatory time frames in which the superintendent must respond to license applications. MTRA supplied the Drafting Committee with sample statutory provisions that included mandatory time frames for response to a license application. 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).

Concerns have been expressed about whether the costs of examining an applicant by the superintendent (which may have locations in other states and overseas) may be onerous and burdensome. It is customary for regulators to set examination fees by administrative rule. Those fees are often capped or structured in such a manner to provide the applicant with a clear picture of the potential costs of an investigation.

SECTION 205. RENEWAL OF LICENSE.

(a) A licensee under this [article] must pay an annual renewal fee of [\$2,000] [30] days before the anniversary of the issuance of the license or, if that date is not a business day, on the first business day after that date.

[(b) A licensee under this [article] shall submit with the renewal fee a report, in a form prescribed by the [superintendent]. The renewal report must state or contain:

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

10 (5) proof that the licensee continues to maintain adequate security as required by
11 Section 203; and

12 (6) a list of the locations in this State where the licensee or an authorized delegate
13 engages in money transmission or other money services activities.

14 (c) If a licensee does not file a renewal report or to pay its renewal fee by the renewal
15 date, and has not been granted an extension of time to do so by the [superintendent], its license is
16 suspended on the renewal date. [The licensee has 30 days after its license is suspended in which to
17 file a renewal report and to pay the renewal fee plus [\$100] for each day thereafter that the
18 superintendent does not receive the renewal form and application.]

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

20 **Notes to this Draft:** Subsection (b) has been bracketed because some states conduct annual
21 examinations of a licensee in lieu of requiring an annual report from each licensee. Conversely,
22 some states utilize annual reports in lieu of annual examinations. States use a combination of
23 supervisory examinations and annual reports to maintain current information concerning the safety
24 and soundness of a licensee.

25 **Reporter's Notes**

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

7 Section 205 also provides for automatic license suspension in the event that a licensee fails to
8 renew its license in a timely fashion. In the previous draft, the superintendent was required to send
9 a notice of suspension to the licensee. The superintendent has a pre-existing duty to notify the
10 licensee of the renewal date and to send the licensee a renewal form. Thus, it was felt unnecessary
11 to require the superintendent to notify the licensee of its own failure to renew its license. .

12 **[SECTION 206. NET WORTH.** A licensee under this [article] shall maintain a net worth
13 of at least [\$25,000].]

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

15 **Notes to this Draft:** Only a minimal net worth requirement has been suggested because net worth
16 is used as an additional requirement to make sure that license applicants and licensees have some
17 resources for commencing and operating a money transmission business. Section 206 has been
18 bracketed because some states use net worth as part of the safety and soundness mechanisms
19 whereas other states rely on bonding/security and permissible investment requirements instead.
20 The current draft gives states the option of choosing between a combination of security, net worth
21 and permissible investment requirements.

22 **Reporter's Note**

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

30 **ARTICLE 3**

31 **LICENSING OF CHECK CASHERS**

32 **SECTION 301. LICENSE REQUIRED.**

33 (a) A person licensed under this [article] may engage in the business of check cashing.

1 (b) A person licensed under [Article] 2 or that is an authorized delegate of a person
2 licensed under [Article] 2 or person licensed under [Article] 4 may engage in check cashing
3 without first obtaining a separate license under this [article].

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

6 **Source:** New

7 **SECTION 302. APPLICATION FOR LICENSE.**

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

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

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

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

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

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

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

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

3 **Reporter's Notes**

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

13 A new provision has been added to require that check cashers provide superintendents with
14 information about the source of their funds. Superintendents and law enforcement officials want
15 to ensure that the cash used in such a business is not derived from money laundering or other
16 illegal activity. For a general discussion of the main differences between Article 2 and Articles 3
17 and 4 see the Reporter's Note to Section 202 (which also explains the rationale for separate
18 licensing requirements for different types of money services businesses). The Note to Section 201
19 also discusses the reasons why certain types of information are requested from applicants during
20 the application process.

21 **SECTION 303. ISSUANCE OF LICENSE.**

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

28 (1) the applicant has complied with Section 302;

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

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

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

9 (d) An applicant whose application is denied by the [superintendent] under this [article]
10 may appeal from the denial and request a hearing before the [superintendent] within [30] days
11 after receipt of the notice of the denial.

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 203.

16 **SECTION 304. RENEWAL OF LICENSE.**

17 (a) A licensee under this [article] must pay a biennial renewal fee of [\$2,000] [30] days
18 before the anniversary of the issuance of the license or, if that date is not a business day, on the
19 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 renewal report must state or contain:

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

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

(c) If a licensee does not file a renewal report or to pay its renewal fee by the renewal date, and has not been granted an extension of time to do so by the [superintendent], its license is suspended on the renewal date. [The licensee has [30] days after its license is suspended in which to file a renewal report and to pay the renewal fee plus [\$100] for each day thereafter.]]

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

Reporter's Note

See the Reporter's Note accompanying Section 205. The Drafting Committee decided to require check cashers and currency exchangers to renew their licenses biennially rather than annually. Because check cashers and currency exchangers pose no safety and soundness concerns, the superintendent does not have a need to examine renewal reports on an annual basis for these businesses. The superintendent, however, will have the authority to conduct an on-site examination if the check casher or currency exchanger engages in money laundering activity or violates a provision of the Act.

ARTICLE 4

LICENSING OF CURRENCY EXCHANGERS

SECTION 401. LICENSE REQUIRED.

(a) A person licensed under this [article] may engage in the business of currency exchange.

(b) A person licensed under [Article] 2 or that is an authorized delegate of a person licensed under [Article] 2 or a person licensed under [Article] 3 may engage in currency exchange without first obtaining a license under this [article].

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

Source: New

SECTION 402. APPLICATION FOR LICENSE.

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

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

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

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

(4) a description of the source of money to be used for currency exchange; and

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

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

Reporter's Notes

At the March 1999 drafting meeting, Observers noted that the Act should contain a different Article for the licensing of check cashers and currency exchangers. Although the provisions contained in Articles 3 and 4 are almost identical, the Drafting Committee thought that states should be presented the option to include less than all of the Articles in a money services business licensing statute. Thus, each of the licensing parts of the Act is separable. As indicated in the Prefatory Note, at present, very few states have licensing requirements for currency exchangers.

1 At the same time, the activity of currency exchange (exchanging larger amounts of one currency
2 for smaller denominations in another, for example) has been identified by law enforcement
3 officials as vulnerable to money laundering (as contrasted with check cashing).

4 For a general discussion of the main differences between Article 2 and Articles 3 and 4 see the
5 Reporter's Note to Section 202 (which also explains the rationale for separate licensing
6 requirements for different types of money services businesses) and Section 302. The Note to
7 Section 202 also discusses the reasons why certain types of information are requested from
8 applicants during the application process.

9 **SECTION 403. ISSUANCE OF LICENSE.**

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

16 (1) the applicant has complied with Section 402;

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

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

21 (b) The [superintendent] shall approve or deny an application for an original license within
22 120 days after a complete application is filed and notify the application of the decision in a record.
23 The [superintendent] for good cause may extend the application period. The [superintendent]
24 shall notify the applicant of the date on which the application is determined to be complete. If the
25 application is not approved or denied within the period allowed for approval, the application is

1 deemed approved and the [superintendent] shall issue the license under this [article] effective as of
2 the first business day after expiration of the period.

3 (c) An applicant whose application is denied a license by the [superintendent] under this
4 [article] may appeal from the denial within 30 days after receipt of the notice.

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

7 **Reporter's Note**

8 See the Reporter's Note accompanying Section 203.

9 **SECTION 404. RENEWAL OF LICENSE.**

10 (a) A licensee under this [article] must pay a biennial renewal fee of [\$2,000] [30] days
11 before the anniversary of the issuance of the license or, if that date is not a business day, on the
12 first business day after that date.

13 [(b) A licensee under this [article] shall submit with the renewal fee a report, in a form
14 prescribed by the [superintendent]. The renewal report must state or contain:

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

18 (2) a list of the locations in this State where the licensee or an authorized delegate
19 engages in currency exchange or check cashing.

20 (c) If a licensee does not file a renewal report or to pay its renewal fee by the renewal
21 date, and has not been granted an extension of time to do so by the [superintendent], its license is
22 suspended on the renewal date. [The licensee has [30] days after its license is suspended in which

1 to file a renewal report and to pay the renewal fee plus [\$100] for each day thereafter the
2 superintendent does not receive the renewal form and application.]]

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

4 **Reporter's Note**

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

12 **ARTICLE 5**

13 **AUTHORIZED DELEGATES**

14 **SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED**
15 **DELEGATE.**

16 (a) In this section, "remit" means to make direct payments of money to a licensee or its
17 representative authorized to receive the money or to deposit money in a financial institution in an
18 account specified by the licensee.

19 (b) 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 furnish in a record to
21 each authorized delegate policies and procedures sufficient to permit compliance with this [Act].

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

24 (d) If a license is suspended or revoked or a licensee does not renew its license, the
25 [superintendent] shall notify all authorized delegates of the licensee whose names are on record
26 with the [superintendent] of the suspension, revocation, or nonrenewal. After notice is sent or

1 publication is made, an authorized delegate shall immediately cease to provide money services as
2 a delegate of the licensee.

3 (e) An authorized delegate may not provide money services outside the scope of activity
4 permissible under the contract between the authorized delegate and the licensee, except activity
5 for which the authorized delegate is licensed under [Article] 2, 3, or 4. [An authorized delegate of
6 a licensee holds in trust for the benefit of the licensee all money net of fees received from money
7 transmission.]

8 **Source:** President's Commission Act Section 10.

9 **Reporter's Note**

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

15 **SECTION 502. UNAUTHORIZED ACTIVITIES.** A person may not engage in
16 providing money services on behalf of a person not licensed under this [Act]. A person that
17 engages in that conduct is providing money services to the same extent as if the person were a
18 licensee.

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

20 **Reporter's Note**

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

25 **ARTICLE 6**

26 **EXAMINATIONS; REPORTS AND OTHER RECORDS**

1 **SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.**

2 (a) The [superintendent] may conduct an annual examination of a licensee or of any of its
3 authorized delegates upon 45 days' notice in a record to the licensee.

4 (b) The [superintendent] may examine the licensee or its authorized delegate without
5 having given notice, if the [superintendent] has reason to believe that the licensee or authorized
6 delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a
7 rule adopted or an order issued under this [Act],

8 (c) If the [superintendent] concludes that an on-site examination is necessary under
9 subsection (a), the licensee shall pay the reasonable cost of the examination.

10 (d) Information obtained during an examination under this [Act] may be disclosed only as
11 provided in Section 608.

12 **Source:** Model Act Regulating Money Transmitters Section 14 and Florida Money Transmitters'
13 Code Section 560.118(1)(a) (with modifications).

14 **Reporter's Notes**

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

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

1 **SECTION 602. JOINT EXAMINATIONS.**

2 (a) The [superintendent] may conduct an on-site examination of books, accounts,
3 documents, and other records listed in Section 605 in conjunction with representatives of other
4 state agencies or agencies of another State or of the federal government Instead of an
5 examination, the [superintendent] may accept the examination report of an agency of this State or
6 of another State or of the federal government or a report prepared by an independent licensed or
7 certified public accountant.

8 (b) A joint examination or an acceptance of an examination report is not a waiver of the
9 [superintendent's] authority to conduct an examination as provided by law. A joint report or a
10 report accepted under this subsection is an official report of the [superintendent] for all purposes.

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

12 **Reporter's Note**

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

18 **SECTION 603. REPORTS.**

19 (a) A licensee shall file with the [superintendent] within [15] business days any changes in
20 information provided in a licensee's application and any other changes prescribed by the
21 [superintendent].

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

1 (c) A licensee shall file a report with the [superintendent] within one business day after the
2 licensee has reason to know of the occurrence any of the following events:

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

5 (2) the filing of a petition by or against the licensee for receivership;

6 (3) the commencement of a proceeding to revoke or suspend its license in a State
7 or country in which the licensee engages in business or is licensed;

8 (4) the cancellation or other impairment of the licensee's bond or other security;

9 (5) an [indictment], prosecution, or conviction of the licensee or of an executive
10 officer, director, or controlling person for a felony; or

11 (6) an [indictment], prosecution, or conviction of an authorized delegate for a
12 felony.

13 **Source:** President's Commission Act Section 13 (with modifications).

14 **Notes to this Draft:** Section 603(a) is new and requires a licensee to report on any changes that
15 occur in information supplied in a license application within 15 days after the change has
16 occurred. This provision ensures that the superintendent has current and accurate information in
17 the time between the filling of an initial application and the submission of a renewal report.

18 **Reporter's Note**

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

28 **SECTION 604. CHANGE OF CONTROL.**

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

4 (b) A licensee shall give the [superintendent] written notice of a proposed change of
5 control within [15] days after learning of the proposed change of control.

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

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

15 (e) The following persons are exempt from the requirements of subsection (a) but must
16 still notify the [superintendent] of a change of control:

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

20 (2) a person that acquires control of a licensee or controlling person of a licensee
21 by devise or descent;

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

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

6 (f) Subsection (a) does not apply to a transaction that the [superintendent] by rule or order
7 exempts in the public interest.

8 (g) Subsection (a) does not apply to public offerings of securities.

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

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

16 **Reporter's Notes**

17 Section 604 requires all persons who wish to acquire a controlling interest in a licensee (as
18 broadly defined in Section 102) to apply for approval from the superintendent prior to obtaining
19 control. The Drafting Committee determined that prior notification was essential for both safety
20 and soundness reasons, as well as for the superintendent to properly assess the background of the
21 persons who wish to acquire control (in order to evaluate whether such persons pose any risks in
22 terms of potential illegal activity). The superintendent retains discretion to request additional
23 information from an applicant (e.g., personal financial information) that might assist the
24 superintendent in evaluating the application.

25 The Committee and Observers have previously debated the issue of whether the superintendent
26 should require applicants to provide personal financial information under Section 604 about
27 controlling persons, such as executive officers of the acquiring company. It was noted, however,
28 that it should not be a mandatory requirement because many executive officers at larger publicly
29 traded companies would object to such a requirement as an unnecessary invasion of privacy, since

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

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

6 (a) A licensee shall maintain books, accounts, documents, and other records necessary to
7 determine the licensee's compliance with this [Act]. A licensee shall maintain the following for at
8 least three years after the record is created:

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

10 (2) a general ledger posted at least monthly containing all asset, liability, capital,
11 income, and expense accounts;

12 (3) bank statements and bank reconciliation records;

13 (4) records of outstanding payment instruments;

14 (5) records of each payment instrument paid within the three-year period;

15 (6) a list of the last known names and addresses of all of the licensee's authorized
16 delegates; and

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

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

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

(d) All books, accounts, documents, and other records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the [superintendent] pursuant to Section 601.

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

Notes to this Draft: A new subsection (d) has been added to clarify that the records maintained by the licensee are subject to inspection pursuant to a regulatory examination as set forth in Section 601.

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 record keeping 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 606. MONEY LAUNDERING REPORTS.

(a) A licensee 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 as amended, and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the 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].]

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

4 **Reporter's Notes**

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

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

18 Approximately ten states require that a money services business comply with all federal and state
19 money laundering and currency transaction reporting laws. State laws typically replicate the
20 federal law and require that cash transactions in excess of \$10,000 be reported to a state
21 authority, as well as to the U.S. Treasury. Most of the state reporting law does not specifically
22 address money services businesses (but may apply to money services businesses by implication).
23 Several states, including Colorado, Connecticut, Idaho, Indiana and Oklahoma, require financial
24 institutions to file suspicious activity reports concurrently with Federal and state authorities.
25 Arizona has its own suspicious activity form for financial institutions. Suspected money
26 laundering activities are reported to Arizona's Attorney General on a one-page form. Georgia
27 provides that each financial institution must keep a record of currency transactions in excess of
28 \$10,000 and that those reports must be filed with the state within 15 days of the transaction.

29 **SECTION 608. CONFIDENTIALITY OF RECORDS.**

30 (a) Financial information not normally available to the public that is submitted on a
31 confidential basis by an applicant or a licensee to comply with licensing or other regulatory
32 functions of the [superintendent] is confidential.

33 (b) This section does not prohibits the [superintendent] from releasing to the public a list
34 of persons licensed under this [Act] or from releasing aggregate financial data on licensees.

35 **Source:** Maine Money Transmitters Act Section 6115 (with modifications).

1 **Notes to this Draft:** Section 608 is a pared down confidentiality provision which protects the
2 business or proprietary financial information that may be submitted by a license applicant or
3 licensee. This provision might also be coupled with a separate investigative provision that would
4 permit the attorney general or county attorney to conduct investigations to determine whether a
5 licensee, authorized delegate or person engaged in money services business has failed to file a
6 report required by this Act or has engaged in any act that constitutes a violation of this Act. See,
7 e.g., Iowa Financial Transactions Reporting Act Section 529.3 (IA St. §529.3).

8 **ARTICLE 7**

9 **PERMISSIBLE INVESTMENTS**

10 **SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

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

15 (b) The [superintendent], with respect to any licensees, may limit the extent to which a
16 type of investment within a class of permissible investments may be considered a permissible
17 investment, except for money and certificates of deposit issued by a United State bank or financial
18 institution. The [superintendent] by rule may prescribe or by order allow other types of
19 investments that the [superintendent] determines to have a safety substantially equivalent to other
20 permissible investments.

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

24 **Source:** President's Commission Act Section 14 (with modifications).

25 **Reporter's Note**

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

4 **SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.**

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

7 (1) cash, a certificate of deposit, or other debt obligation of an insured depository
8 institution, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section
9 1813];

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

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

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

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

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

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

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

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

21 (3) a demand borrowing agreement made to a corporation or a subsidiary of a
22 corporation whose securities are traded on a national securities exchange if the aggregate of the
23 amount of principal and interest outstanding under demand borrowing agreements under this

paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time have principal and interest outstanding under demand borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

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

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

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

Reporter's Notes

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

The items that the Committee identified as potentially problematic were:

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

The Drafting Committee thought that these types of investments posed higher levels of risk to the licensee and ultimately to the public than was appropriate for money services businesses. Industry Observers noted, however, that such investments were commonly included in state law. In fact, the MTRA outline lists such investments as permissible, though it states that loans should not

1 exceed 10 percent of the net worth of a licensee, and the amount of such loans as a total
2 percentage of permissible investments may be subject to legislation.

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

12 Receivables, in particular, was one category that received considerable attention by members of
13 the Committee. Industry Observers, however, explained that there was a practical reason for
14 including receivables as a category of permissible investments. They noted that the practice of
15 including receivables as permissible investments had become a necessity due to the use of
16 automated money order dispensers. Typically, money orders are sold at sales outlets through
17 automated dispensers. The automated dispenser immediately records the sale of the money order
18 and notifies the money transmitter. This real-time "notification" immediately triggers the
19 obligation of a money transmitter to retain permissible investments for the money order sold on a
20 dollar for dollar basis. However, while the obligation to maintain investments is triggered at the
21 time of sale, there is a lag of time until the sales outlet actually remits funds to the money
22 transmitter. For the time period between sale and remittance of the funds that the sales outlet has
23 received, the money transmitter needs to treat those "receivables" as part of its permissible
24 investment portfolio. Previously, authorized delegates had notified a money transmitter of the
25 number of money orders sold at the same time that it remitted a check for the funds received.

26 **ARTICLE 8**

27 **ENFORCEMENT**

28 **SECTION 801. ORDERS TO CEASE AND DESIST; POWERS OF SUSPENSION** 29 **AND REVOCATION.**

30 (a) After notice and hearing, the [superintendent] may issue an order to cease and desist,
31 suspend or revoke a license, place a licensee in receivership, or order a licensee to revoke the
32 designation of an authorized delegate if:

33 (1) the licensee does not comply with this [Act] or a rule adopted or an order
34 issued under this [Act];

1 (2) the licensee engages in fraud, misrepresentation, deceit, or gross negligence;

2 (3) an authorized delegate violates the Bank Secrecy Act, a state or federal anti-
3 money laundering statute, or a rule adopted or an order issued under this [Act] as a result of the
4 licensee's willful misconduct or willful blindness;

5 (4) the licensee is insolvent, suspends payment of its obligations, or makes an
6 assignment for the benefit of its creditors;

7 (5) the licensee does not remove an authorized delegate after the [superintendent]
8 issues and serves upon the licensee a final order setting forth a finding that the authorized delegate
9 has violated this [Act];

10 (6) the competence, experience, character, or general fitness of the licensee,
11 authorized delegate, controlling person, or responsible person of the licensee or authorized
12 delegate indicates that it is not in the public interest to permit the person to engage in money
13 services activities; or

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

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

19 **Source:** Florida Money Transmitters' Code Section 560.11; President's Commission Act Sections
20 11 and 12 (with modifications).

21 **Notes to this Draft:** Section 801(a)(2) has been amended and language concerning the
22 licensee's responsibility for the fraud, misrepresentation, deceit or gross negligence of an
23 authorized delegate has been removed. Under the previous Section 801(a)(2), the licensee could
24 have its license revoked based on misrepresentation or fraudulent acts by one of its authorized
25 delegates. Section 801(a)(3) has also been revised. The licensee may still have its license revoked
26 should an authorized delegate violate either a money laundering statute or any part of the Act.

1 This creates a degree of accountability on the part of the licensee for its delegates with respect to
2 compliance with state and federal anti-money laundering measures and also with the requirements
3 of this Act. However, it has been difficult for regulators to articulate a clearly defined standard as
4 to what constitutes a "willful failure to supervise" an authorized delegate. Consequently, this
5 language has been omitted.

6 **Reporter's Notes**

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

19 Some states provide more detailed standards for when a cease and desist order becomes effective.
20 The Texas Currency Exchange Transportation and Transmission provisions of the Texas Finance
21 Code provide that a cease and desist order takes effect on issuance if the Banking Commissioner
22 finds a threat of immediate and irreparable harm to the license holder or the public. If no
23 immediate or irreparable harm is found, the order is not effective before 10 days after the order is
24 received. Other state laws enumerate separate and specific grounds for the denial of a license or
25 for revocation, suspension or restriction of a previously granted license. Florida, for example, lists
26 a material misstatement of fact in an initial or renewal application, the loss of license in another
27 jurisdiction (due to fraud or dishonest dealing) and criminal convictions involving fraud or
28 dishonest dealing as grounds for license denial, suspension or non-renewal. See Florida Money
29 Transmitters' Code Section 560.114(2)(a)-(c).

30 **SECTION 802. AUTHORIZED DELEGATES; ORDERS TO CEASE AND** 31 **DESIST.**

32 (a) After notice and hearing, the [superintendent] may issue an order to cease and desist
33 against an authorized delegate, if the [superintendent] finds that:

34 (1) the authorized delegate is violating or has violated this [Act] or a rule adopted
35 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 money services activities;

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

(5) the authorized delegate commits a felony; or

(6) the authorized delegate engages in fraud, misrepresentation, deceit, or gross negligence.

(b) The [superintendent] may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the [superintendent].

(c) 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).

Notes to this Draft: Section 802(a) has been revised to focus solely on the conduct of the authorized delegate. Previously, the superintendent was able to issue a cease and desist order against the licensee based on the conduct of a licensee's delegate. As noted in Section 801, under certain circumstances, a licensee may lose its license or be subject to other action by the superintendent if a delegate engages in violations of the Act or of related money laundering statutes and regulations as a result of the licensee's willful misconduct or willful blindness. A New subsection (b) has been added to Section 802, which permits the superintendent to issue an order against a licensee requiring the licensee to cease providing services through a delegate if the delegate is already subject to a separate cease and desist order.

Reporter's Note

1 Section 802 complements Section 801. Section 802 sets forth the circumstances pursuant to
2 which the superintendent may take direct action against the authorized delegate. This is another
3 important enforcement and regulatory tool for the prevention of money laundering. Because
4 authorized delegates may be potential sites for money laundering activity (due to a lesser degree
5 of supervision and oversight and also the large number of delegates that may exist for a given
6 licensee), the superintendent needs to have authority to take action against the delegate directly.

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

8 (a) If the [superintendent] determines that a violation of this [Act] or of a rule adopted or
9 an order issued under this [Act] by a licensee or authorized delegate is likely to cause immediate
10 and irreparable harm to the licensee, its customers, or the public as a result of the violation, or
11 cause insolvency or significant dissipation of assets of the licensee, the [superintendent] may seek
12 a [temporary restraining order] requiring the licensee or authorized delegate to cease and desist
13 from the violation. The order becomes effective upon service of it upon the licensee or authorized
14 delegate.

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

17 (c) A licensee or an authorized delegate that is served with a temporary order to cease and
18 desist may petition the [appropriate court], for an injunction setting aside, limiting, or suspending
19 the enforcement, operation, or effectiveness of the temporary order pending the completion of an
20 administrative proceeding pursuant to Section 801 or 802.

21 (d) The [superintendent] must commence administrative proceedings pursuant to Section
22 801 or 802 within [10] days after obtaining a temporary order.

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

25 **Notes to this Draft:** Subsection(d) is new. At the October 1999 Drafting Committee meeting, it
26 was decided that the Superintendent needed to commence an administrative proceeding at a
27 certain time after issuing the temporary cease and desist order. Subsection(d) requires the

1 superintendent to begin an enforcement proceeding pursuant to Section 801 or 802 rather than
2 relying solely on the temporary order as an enforcement tool.

3 **Reporter's Note**

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

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

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

18 **Reporter's Note**

19 Section 804 gives the superintendent the ability to enter into a negotiated settlement with a money
20 services business with respect to alleged violations of the Act and potential disciplinary
21 proceedings. The use of consent orders provides the superintendent with a flexible means of
22 achieving enforcement goals while minimizing the administrative and fiscal burden of lengthy
23 administrative proceedings and hearings.

24 **SECTION 805. CIVIL PENALTIES.**

25 (a) A person that violates this [Act] or a rule adopted or an order issued under this [Act]
26 may be assessed a civil penalty by [the superintendent] in an amount not to exceed [\$1,000] per
27 day plus the State's costs and expenses for the investigation and prosecution of the matter,
28 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 (with modifications)

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 mechanisms due to the commercial nature of the Act. The current Section 805 was the second of two alternatives 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 opportunity to cure their violations. The Drafting Committee decided that such a "cure" provision eliminated much of the effectiveness of the civil money penalty provision. The second alternative, which was retained in the Act, has been modified. Previously, it included a reference to a fine equal to the gross business engaged in connection with the violation. The Drafting Committee and Observers alike considered this too imprecise a formula. Instead, a civil money penalty of \$1,000 per day is included. Additionally, the Committee eliminated former subsection 805 (b), which included a separate fine of \$1,000 per day for engaging in a money services business without a license. It was decided that this was, by definition, a violation of the Act and therefore did not need to be the subject of a separate provision.

SECTION 806. CRIMINAL PENALTIES.

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

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

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

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

Reporter's Note

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

ARTICLE 9

ADMINISTRATIVE PROCEDURES

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

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

Reporter's Note

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

SECTION 902. HEARINGS.

(a) Except as otherwise provided in Sections 205(c), 305(c), 405(c), and 803, the [superintendent] may not suspend or revoke a license, issue an order to cease and desist, revoke the designation of an authorized delegate, or assess a civil penalty without notice and an

1 opportunity to be heard. The [superintendent] shall also hold a hearing when requested to do so
2 by an applicant whose application for a license is denied.

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

6 **Source:** President's Commission Act Section 12 (with modifications).

7 **Reporter's Note**

8 Except for the issuance of temporary orders pursuant to Section 803, the superintendent is
9 required to provide notice and have a hearing before taking any disciplinary or enforcement
10 actions against a licensee or its authorized delegates. The President's Commission Act only refers
11 to suspension, revocation and denial of licenses. Section 802 has been also been extended further
12 to include cease and desist authority and the ability to assess civil penalties.

13 **ARTICLE 10**

14 **MISCELLANEOUS PROVISIONS**

15 **SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
16 applying and construing this Uniform Act, consideration must be given to the need to promote
17 uniformity of the law with respect to its subject matter among States that enact it.

18 **SECTION 1002. SEVERABILITY CLAUSE.** If any provision of this [Act] or its
19 application to any person or circumstance is held invalid, the invalidity does not affect other
20 provisions or applications of this [Act] which can be given effect without the invalid provision or
21 application, and to this end the provisions of this [Act] are severable.

22 **SECTION 1003. EFFECTIVE DATE.** This [Act] takes effect...

23 **SECTION 1004. REPEALS.** The following acts and parts of acts are repealed:

24 (1) . . .

25 (2) . . .

1 (3) . . .

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

3 **SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS.**