

1 DRAFT

2 FOR DISCUSSION ONLY

3 ~~UNIFORM MONEY-SERVICES~~MONEY SERVICES BUSINESS ACT

4
5
6 NATIONAL CONFERENCE OF COMMISSIONERS
7 ON UNIFORM STATE LAWS

8 ~~May 31, 1999~~

9 February 1999

10 ~~UNIFORM MONEY-SERVICES~~MONEY SERVICES BUSINESS ACT

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

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15 ON UNIFORM STATE LAWS

16
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*Formerly the Nondepository Providers of Financial Services Act. The Drafting Committee ~~voted to change the draft act's~~ changed the name at the October 1998 meeting. The Executive Committee approved the name change as of January 1999.

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1 ARTICLE 1

2 GENERAL PROVISIONS

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

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

22
23 ~~SECTION 102. DEFINITIONS.~~ In this [Act]:

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

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

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

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

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

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

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

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

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

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

13 ~~_____ (8) "Currency exchange" means exchanging money of one government for money~~
14 ~~of another government.~~

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

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

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

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

4 ~~_____ (13) "Licensee" means a person licensed under this [Act].~~

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

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

11 ~~_____ (16) "Mobile location" means a vehicle or a movable facility~~
12 ~~where check-cashing occurs. (1) "Applicant" means a person filing an~~
13 ~~application for a license under this [Act].~~

14 **Source:** Non-Bank Funds Transmitter Group Model Act Regulating
15 Money Transmitters ("Model Act Regulating Money Transmitters")
16 Section 3.

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

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

23 **Reporter's Note:** It is important to clearly define the outlets
24 through which a money services business conducts its business.
25 This definition will help to define the legal relationship
26 between a money services business and those outlets. The Money
27 Transmitters Regulators' Association Model Legislation Outline
28 ("Model Legislation Outline") uses the term "authorized agent" as
29 an alternative to authorized delegate. FinCEN, in its May 1997
30 proposed rulemaking concerning money services businesses, uses
31 the term "agent" for those same entities. In its comments, FinCEN
32 notes that "Treasury intends that the concept of 'agent' for the
33 list requirement should be as broad as the common law of agency
34 would allow, that is, it would extend to any relationship that

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

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

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

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

31 **Source: New**

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

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

48 An alternative definition that is used in some of the states
49 excludes "persons engaged in check cashing [or currency

1 exchanging] which is incidental to the retail sale of goods and
2 services, whose compensation for cashing checks [or exchanging
3 currency] does not exceed 5 percent of the total gross income
4 from the retail sale of goods or services"
5

6 The Florida State Department of Banking has drafted suggested
7 amendments to its Money Transmitters' Code. To date, these
8 amendments have not been presented to the legislature. The
9 proposed amendments include a revised definition of check casher:

10 "Check casher" means a person who, for
11 compensation or gain, or in the expectation of
12 compensation or gain, either directly or
13 indirectly, sells currency in exchange for payment
14 instruments received, except travelers checks and
15 foreign-drawn payment instruments.
16

17 Suggested Amendments to Florida Money Transmitters' Code Section
18 560.120.
19

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

23 **Source:** Arizona Money Transmitter Act Section 6-1201 (with
24 modifications).

25 **Reporter's Note:** It is important to have a definition for each of
26 the services that have been grouped under the general heading of
27 money services business. The Florida Banking Department has
28 proposed an amendment to the definition of check cashing which
29 mirrors the changes to the definition of check casher (i.e., it
30 inserts the terms or gain or in the expectation of compensation
31 or gain, either directly or indirectly into the definition).
32

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

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

39 ~~**Reporter's Note:** The definition of check issuer has been~~
40 ~~eliminated and the activity of issuing payment instruments has~~
41 ~~been included as part of the definition of check seller. Existing~~
42 ~~state legislation tends to group these activities together. Some~~
43 ~~Observers have also pointed out that the phrase check issuer is~~
44 ~~unique to federal regulations.~~
45

46 (ALTERNATIVE 1)

47 (5) "Control" means ownership of, or the power to vote,

1 25 percent or more of the outstanding voting securities of a
2 licensee or controlling person. For the purpose of determining
3 the percentage controlled by a person, the person's interest
4 shall be aggregated with the interest of any other person
5 controlled by an officer, partner, authorized delegate, spouse,
6 parent, or child of the person.

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

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

18
19 More generally, the Drafting Committee felt that Subsection (5)
20 was a formalistic definition of control and did not take into
21 account the ability of persons to influence management in other
22 ways such as the ability to elect directors or otherwise exert
23 control. The circumstances under which shares will be aggregated
24 is not fully defined. Furthermore, aggregation is only triggered
25 when the interests of one person are controlled by the other
26 person. Consequently, two alternatives have been offered which
27 may provide for a more flexible approach to the notion of
28 control.

29 (ALTERNATIVE 2)

30 (5) "Control" means:

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

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

36 (C) direct or indirect exercise of a controlling
37 influence over the management of a licensee or controlling
38 person, if the [superintendent], after notice and opportunity for

1 hearing, so determines.

2 **Source:** Federal Bank Holding Company Act, 12 U.S.C.A. Section
3 1842(a)(2) (with modifications).

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

12
13 This is a very flexible category that allows for a broader
14 interpretation of the concept of control. Additionally, the Bank
15 Holding Company Act includes a presumption that a company that
16 owns five percent or less of a bank's shares is not in control.
17 Thus, there is a presumption against control if share ownership
18 does not exceed five percent.

19
20 **Selected Issues:**

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

29
30 (6) "Controlling person" means a person having control.

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

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

39
40 (7) "Currency" means the coin and paper money of the
41 United States, or of a foreign government which is designated as
42 legal tender and which circulates and is customarily used and
43 accepted as a medium of exchange in the country.

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

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

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

3
4 (8) "Currency exchanger" means a person that, for
5 compensation, exchanges currency of one government for currency
6 of another government.

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

8
9 (9) "Engage in the business" means engage for
10 compensation in activities regulated under this [Act] [more than
11 10 times in any calendar year].

12 **Source:** Modified version of definition of "Conduct the business"
13 included in The President's Commission on Model State Drug Laws
14 Model Money Transmitter Licensing and Regulation Act
15 ("President's Commission Act") Section 4(c); and the President's
16 Commission on Model State Drug Laws Model Financial Transaction
17 Reporting Act (Model Financial Transaction Reporting Act Section
18 4 (d)).

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

28
29 (10) "Executive officer" means a licensee's president,
30 chairman of the executive committee, chief financial officer,
31 responsible individual, or any other individual that performs
32 similar functions.

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

34
35 (11) "Key shareholder" means a person, or group of
36 persons acting in concert, that owns 25 percent or more of a
37 voting class of the securities of an applicant or licensee.

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

39
40 (12) "Licensee" means a person licensed under this

1 [Act].

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

3
4 (13) "Limited station" means a place where a check
5 casher is authorized to engage in check cashing for the employees
6 of a single business or office at a single location at or near
7 the business or office.

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

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

18
19 (14) "Material litigation" means litigation that,
20 according to generally accepted accounting principles, is
21 considered significant to an applicant's or licensee's financial
22 condition and responsibility, and is referred to in that
23 applicant's or licensee's [annual audited financial statements],
24 reports to shareholders, or similar documents.

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

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

32
33 (15) "Mobile location" means a vehicle or other movable
34 object where a check casher engages in check cashing.

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

38 **Reporter's Note:** The previous definition of a "location" blurred
39 the distinction between mobile locations (e.g., travelling check
40 cashing stations) and limited purposes locations (e.g., check
41 cashing services which cash payroll checks for a certain employer

1 on or near the employer's premises). Therefore former 1-102(17)
2 has been omitted and two new definitions of a mobile location and
3 a limited facility have been added. The term "movable object"
4 replaces the term "movable means" used in the Delaware
5 definition.

6
7 ~~—————(17)(16)~~ "Money" means a medium of exchange
8 that is authorized or adopted by a domestic or foreign
9 government. The term includes a monetary unit of account
10 established by an intergovernmental organization or by agreement
11 between two or more governments.

12 ~~—————(18) "Money services business" means a person that is licensed under this [Act]~~
13 ~~or engages in the business of money transmission, check cashing, or currency exchange.~~

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

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

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

26 ~~—————(22) "Person" means an individual, corporation, business trust, estate, trust,~~
27 ~~partnership, limited liability company, association, joint venture, or any other legal or~~

1 ~~commercial entity. The term does not include a government, governmental subdivision, agency,~~
2 ~~or instrumentality, or public corporation.~~

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

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

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

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

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

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

21 ~~—————(29) "Traveler's check" means an instrument identified as a traveler's check on its~~
22 ~~face or commonly recognized as a traveler's check and issued in a specified denomination of~~

1 ~~currency with a provision for a specimen signature of the purchaser to be completed at the time~~
2 ~~of purchase and a countersignature of the purchaser to be completed at the time of negotiation.~~
3 ~~_____ (30) "Unsafe or unsound practice" means a practice or conduct that is contrary to~~
4 ~~generally accepted standards applicable to a money transmitter, or that is a violation of an order~~
5 ~~of the [superintendent] against a money transmitter if the practice, conduct, or violation creates~~
6 ~~the likelihood of material loss, insolvency, or dissipation of assets of the money services~~
7 ~~business, or otherwise materially prejudices the interests of its customers.~~

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

11 **~~Reporter's Note~~**

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

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

32 ~~3. "Control." The definition of control is derived from the definition contained in the Federal~~
33 ~~Bank Holding Company Act, 12 U.S.C. Section 1842(a)(2). It was decided that the definition of~~
34 ~~control included in the September 1998 draft was too formalistic in that it required a bright line~~
35 ~~threshold of 25 percent or more ownership to trigger control. The Drafting Committee decided~~
36 ~~that the Federal Bank Holding Company Act provided a useful definition that did not relate~~

1 solely to a threshold of share ownership. The current definition is more flexible and allows for a
2 broader interpretation of the concept of control.

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

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

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

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

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

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

10. ~~"Stored value instrument." At the October 1998 drafting meeting, the Committee decided that stored value providers should be required to obtain licenses under the Act. At present, stored value instruments are encompassed within the definition of payment instruments. In 1998, Connecticut enacted the Act Concerning Electronic Payment Instruments and Currency and Foreign Transactions Reporting. The Connecticut statute amended existing money-transmission law so those stored value products (referred to as "electronic payment instruments") are treated as payment instruments. Furthermore, issuers of such payment instruments are subject~~ **Source:** Uniform Commercial Code Section 1-201(24).

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

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

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

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

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

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

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

1 (18) "Money transmitter" means a person that engages,
2 for compensation, in the transmission of money by any means,
3 including transmissions within this country or to or from
4 locations outside this country by payment instrument, wire,
5 telecopier, facsimile, electronic transfer, or courier. The term
6 does not include a clearinghouse or other association of banks
7 that effects transfers of funds between or among banks through
8 check clearing, wire transfer, automated clearinghouse, or
9 similar services.

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

18 **Reporter's Note:** The current definition of money transmitter was
19 previously included in the September 1998 draft as Alternative 1.
20 Alternative 2 was the proposed definition of money transmitter
21 included as part of FinCEN's proposed rulemaking concerning money
22 services businesses. The Drafting Committee felt that there was
23 less utility in harmonizing state definitions with federal
24 definitions because: (1) state legislation had different goals
25 and purposes with respect to oversight of money services
26 businesses (as compared to federal oversight) and (2) the federal
27 regulations concerning money services businesses had not yet been
28 promulgated and therefore FinCEN's proposed definitions may
29 change in the future.

30 **Selected Issue:** Should the current definition of money
31 transmitter (and also the definition of payment instrument
32 defined below) include electronic currency providers who provide
33 customers with the ability to transmit funds over the Internet?

34 **Discussion:** At present, several states including Connecticut and
35 West Virginia have amended their money transmission legislation
36 to include stored value providers. Other states, such as Texas,
37 have included stored value providers by interpretation. West
38 Virginia defines "currency transmission" or "money transmission"
39 to include "the transmission of funds through the issuance and
40 sale of stored value cards which are intended for general
41 acceptance and use in commercial or consumer transactions." See
42 WV ST. Section 32A-2-1(6)

43
44 Connecticut has taken a different approach and has defined the
45 term "payment instrument" to include "electronic payment

1 instruments." The Connecticut Department of Banking, in a
2 memorandum prepared concerning the amendments to Connecticut law
3 noted:

4
5 The explosive growth in electronic commerce and the
6 increasing use of electronic payment instruments such as
7 electronic travelers checks and other prepaid instruments,
8 exposes the consumers of such instruments to the potential
9 for loss due to the insolvency of the issuers of such
10 instruments or fraud. [The Connecticut bill] will provide
11 protection to consumers of electronic payment instruments by
12 making issuers of such instruments subject to the
13 Commissioner's jurisdiction and by imposing licensing, net
14 worth and bonding requirements on such issuers.

15
16 See Memorandum from John P. Burke, Banking Commissioner regarding
17 An Act Concerning Electronic Payment Instruments and Currency and
18 Foreign Transactions Reporting (S.B. 230) dated February 17, 1998
19 presented at Connecticut Banks Committee Public Hearing.

20
21 Based on recommendations from Observers, the current draft of the
22 Proposed Act treats stored value instruments as payment
23 instruments. Therefore, a stored value provider would also be a
24 payment instrument seller (as opposed to a money transmitter).
25 The current draft contains an additional definition of a stored
26 value provider. This may not be necessary and it will be useful
27 for Observers to provide input into whether the Connecticut
28 approach seems the most appropriate and also whether a separate
29 definition is needed for stored value providers as distinct from
30 payment instrument sellers.

31
32 Additionally, the Drafting Committee will need to consider
33 whether electronic currency which is transmitted over the
34 Internet (as compared with stored-value instruments) would fall
35 within the current definition of money transmitter and also
36 whether this form of currency transmission needs to be separately
37 addressed in the Proposed Act.

38
39 (19) "Outstanding", in regard to a payment instrument,
40 means a payment instrument issued by a licensee, which has been
41 sold directly by the licensee, or a payment instrument issued by
42 a licensee which has been sold by an authorized delegate of the
43 licensee, which has been reported to the licensee as having been
44 sold and which has not yet been paid by or for the licensee.

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

46
47 (20) "Payment instrument" means a check, draft, money

1 order, traveler's check whether in written or electronic form,
2 stored-value instrument, or other instrument for the transmission
3 or payment of money whether or not negotiable, and whether or not
4 in written or electronic form. The term does not include a credit
5 card voucher, letter of credit, or any instrument that is
6 redeemable by the issuer in goods or services.

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

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

25
26 At the October 1998 meeting, the Drafting Committee affirmed its
27 decision to include stored value products and stored value
28 providers within the scope of the Proposed Act. Drafting
29 Committee members felt that the use of stored value as a means of
30 payment was similar to money transmission as a process.
31 Therefore, to the extent possible, the Drafting Committee
32 recommended including stored value within existing definitions of
33 money services businesses. Industry Observers subsequently made a
34 similar recommendation with respect to the expansion of the
35 definition of payment instruments. Currently, the Proposed Act
36 follows the Connecticut approach and treats stored value
37 instruments (including electronic traveler's checks) as payment
38 instruments.

39
40 (21) "Payment instrument seller" means a person that
41 engages in the business of issuing payment instruments or selling
42 payment instruments issued by another person, even if incidental
43 to another business.

44 **Source:** FinCEN Proposed Amendments to the Bank Secrecy Act

1 Regulations B Definition and Registration of Money Services
2 Businesses amending 31 C.F.R. Part 103 with proposed
3 modifications of Non-Bank Funds Transmitters Group.
4 **Reporter's Note:** The term used by FinCEN is check seller rather
5 than payment instrument seller.

6
7 (22) "Person" means an individual, corporation,
8 business trust, estate, trust, partnership, limited liability
9 company, association, joint venture, or any other legal or
10 commercial entity. The term does not include government;
11 governmental subdivision, agency, or instrumentality; or public
12 corporation.

13 **Source:** USL Drafting Manual.

14 **Reporter's Note:** This is the Standard NCCUSL formulation for this
15 definition.

16 **Reporter's Note on former Section 1-102(26):** The previous
17 definition of "permissible investments" has been moved into
18 Article 7 of the Proposed Act. Many Observers and Drafting
19 Committee members felt that the definition of permissible
20 investments was more of a substantive provision that belonged
21 within the permissible investments segment of the draft.

22
23 (23) "Remit" means to make direct payment of funds to a
24 licensee or its representative authorized to receive the funds or
25 to deposit funds in a bank, credit union, savings and loan
26 association, or other similar financial institution in an account
27 specified by the licensee.

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

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

34 **Source:** Arizona Money Transmitter Act Section 6-1210(4) (with
35 modifications)

36 **Reporter's Note:** Many states have incorporated some notion of a
37 "responsible" individual or controlling person, or money
38 transmitter affiliated party to indicate persons who have
39 oversight or managerial responsibility with respect to money

1 services businesses. A responsible individual is someone who has
2 an active role in management and operations as contrasted with a
3 controlling person or key shareholder that may or may not have
4 such a role.

5
6 (25) "State" means a State of the United States, the
7 District of Columbia, Puerto Rico, or any territory or insular
8 possession subject to the jurisdiction of the United States.

9 **Source:** USL Drafting Manual.

10 **Reporter's Note:** This is standard NCCUSL formulation.

11
12 (26) "Stored-value instrument" means a card or other
13 tangible object for the transmission or payment of money which
14 contains a microprocessor chip, magnetic stripe, or other means
15 for the storage of information, which is prefunded, and for which
16 the value is decremented upon each use, but does not include a
17 card or other tangible object that is redeemable only by the
18 issuer in the issuer's goods and services.

19 **Source:** Conn. Gen Stat. Ann 36a-596(1) (with modifications
20 proposed by Observers).

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

34
35 The previous definitions included in the earlier draft (which
36 have been eliminated from the current draft) are:

- 37
38 • "Closed-end stored value product" means a stored value
39 product where the issuer is also the payee and the product
40 is issued to pay for a series of goods and services that are
41 provided by the issuer.

42
43 This definition was derived from A Commercial Lawyer's Take on

1 the Electronic Purse: An Analysis of Commercial Law Issues
2 Associated with Stored Value Cards and Electronic Money prepared
3 by the American Bar Association's Uniform Commercial Code
4 Committee, Subcommittee on Payments, the Banking Law Committee,
5 Subcommittee on Domestic and International Payments and EFT and
6 the Committee on Law of Commerce in Cyberspace (1996). Many of
7 the comments received by FinCEN with respect to registration
8 requirements for stored value issuers discussed the distinction
9 between closed-end systems such as phone cards and metro cards
10 and open systems that can be used by consumers for a wide variety
11 of transactions. The definitions previously provided in the
12 Proposed Act were an attempt to distinguish between closed and
13 open systems for purposes of licensing and regulation. Other
14 exceptions that may still need to be included in the definition
15 of stored value include a small dollar exception for issuers.
16

- 17 • "Stored value" means funds or monetary value [greater than
18 \$500] represented in digital electronics format, whether or
19 not specially encrypted, and stored or capable of storage on
20 electronic media so as to be retrievable and transferable
21 electronically. [The term excludes funds or monetary value
22 in digital electronics format that is part of a closed-end
23 stored value network.]
24

25 The previous definition of stored value was derived from the
26 FinCEN proposed amendments to the Bank Secrecy Act Regulations B
27 Definition and Registration of Money Services Businesses amending
28 31 C.F.R. Part 103. As noted previously, most comments received
29 in response to FinCEN's proposed money services business rules
30 suggested that stored value products should be eliminated
31 altogether from the definition of money services business. The
32 major reason is that these products are very new and still
33 changing rapidly. At the first Drafting Committee meeting,
34 however, the Drafting Committee observed that it might be prudent
35 to create a framework for regulation since it would take some
36 time before the draft act would be promulgated. The comments that
37 FinCEN received also suggested that closed-end systems be
38 excluded from a definition of stored value. This would exclude
39 private smart card and debit card systems such as university
40 debit cards or metro cards, etc. In the preamble to the proposed
41 rule, FinCEN stated that it may be appropriate to exclude closed
42 system products that are limited to facilitating small
43 transactions (also known as "micro" transactions) FinCEN also
44 notes that "in a purely closed system, the stored value card is
45 accepted only by a single merchant or entity and operates as
46 prepayment for specific goods and services, such as public
47 transportation or telephone calls. . . ." See 62 Fed. Reg. 27894.
48 The Federal Reserve Bank of New York has suggested that the
49 phrase "funds or monetary value" should be replaced with
50 "intangible entitlement to be paid" because the term "funds" may
51 give the impression that a stored value product has inherent
52 value whereas the product only has value if the issuer is credit
53 worthy.

1 **Selected Issue:** Should stored value products be excluded from
2 licensing if they are below a certain dollar threshold? Comments
3 on FinCEN's proposed rules suggest that only stored value cards
4 that are over \$500 in value should be included in the definition
5 of money services business. At the October Drafting Committee
6 meeting, there was much discussion of the issue of whether stored
7 value products would be created in the near future to carry sums
8 over \$500. Additionally, the Drafting Committee has previously
9 discussed whether smaller denomination products might be
10 purchased and used to launder funds in the aggregate (e.g., a
11 money launderer buys several hundred phone cards). Alternatively,
12 certain stored value products may hold less than \$500 but can be
13 reloaded several times and thus exceed the \$500 threshold.

14
15 (27) "Stored-value provider" means a person that
16 engages in the business of issuing, selling, or redeeming stored-
17 value instruments. The term includes a person that is subject to
18 regulation, supervision, and examination by a federal or state
19 banking agency and which does not issue, sell, or redeem stored-
20 value instruments to or from consumers.

21 **Source:** New.

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

39
40 The Drafting Committee will need to consider whether stored value
41 providers should remain distinct entities from payment instrument
42 sellers and if so, the function of payment instrument seller
43 should also be revised to exempt entities subject to supervision
44 by a banking regulator.

45
46 (28) "[Superintendent]" means the [state superintendent

1 of banks or other senior state regulator charged with the
2 regulation of money services businesses].

3 **Source:** Model Act Regulating Money Transmitters Section 3.
4 **Reporter's Note:** States use different regulatory bodies to
5 supervise the conduct of a money services business. In some
6 states, the superintendent of banking is vested with this
7 responsibility. In other jurisdictions, it is the State
8 securities commissioner.

9
10 (29) "Traveler's check" means an instrument identified
11 as a traveler's check on its face or commonly recognized as a
12 traveler's check and issued in a specified denomination of
13 currency with a provision for a specimen signature of the
14 purchaser to be completed at the time of purchase and a
15 countersignature of the purchaser to be completed at the time of
16 negotiation.

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

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

27 **Source:** Florida Money Transmitters' Code Section 560.103(20).
28 **Reporter's Note:** During its annual meeting in July 1998, the
29 Money Transmitter Regulators Association ("MTRA") noted that
30 state regulators needed regulatory authority with respect to the
31 unsafe or unsound practices of money services businesses. The
32 Drafting Committee should also decide that the superintendent's
33 ability to take into account the size of the money services
34 business, the magnitude of the loss and the gravity of the
35 violation should be moved into the substantive provisions of the
36 Proposed Act.

1 to licensing and regulation in Connecticut. See CT. Legis. 98-192, cited in 1998 Conn. Legis.
2 Serv. P.A. 98-192 (S.S.B. 230) (West 1998). The Committee will continue to review the
3 definition of "stored value" in the Act. For example, there have been suggestions that such a
4 payment substitute should not be defined in relation to an instrument but more broadly in terms
5 of the actual concept of its "value."

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

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

29 ~~SECTION~~ **SECTION 103. SUPERVISORY POWERS OF**

30 **[SUPERINTENDENT]**. Consistent with this [Act] the [superintendent]
31 ~~shall adopt rules pursuant to the [administrative procedure act] necessary to achieve the purposes~~
32 of this [Act].has supervision over all money services businesses and
33 their authorized delegates.

34 ~~Source:~~ **Source:** New

35 ~~Reporter's Note~~

36 ~~The State Superintendent for Banking or Banking Commissioner is usually the state regulator~~
37 ~~that supervises and regulates money services businesses.~~Florida Money Transmitters'
38 Code Section 560.105.

Reporter's Note: Some Observers have suggested that an alternative to multi-state supervision would be a home-state/host-state licensing regime. The Drafting Committee has rejected this approach as the state regulators and other Observers favor a state-based approach to regulation of money services businesses. Resource sharing in the form of information sharing and joint examinations, however, are provided for in the Proposed Act.

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

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

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

~~(3) a State or a governmental subdivision, agency, or instrumentality thereof;~~

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

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

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

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

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

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

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

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

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

~~—————Reporter's Note~~

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

~~2. ——— Many of the new exclusions apply to organizations that provide clearing and settlement services (which do involve the transmission of money). Clearing and settlement often involves the transfer of funds from one bank account to another (e.g., the debiting and crediting of~~

1 ~~accounts of various participants in a trading system or credit card consortium) where funds are~~
2 ~~transferred from bank accounts of a participant's financial institution. The clearing and~~
3 ~~settlement organizations listed in the exemptions are already subject to supervision by other~~
4 ~~federal or other state regulators.~~

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

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

15 ~~5. The proposed exclusion for stored-value issuers, sellers or redeemers~~
16 ~~relates only to those entities that are subject to oversight by a federal or state banking agency and~~
17 ~~that do not issue, sell or redeem stored value directly to individuals. Such entities would already~~
18 ~~be regulated from a safety and soundness standpoint by banking agencies and would not have~~
19 ~~direct obligations to individuals. Instead, such entities would sell stored value on a wholesale~~
20 ~~basis to other institutions. (1) the United States or a department, agency,~~
21 ~~or instrumentality thereof;~~

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

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

24 ~~(4) a bank, bank holding company, thrift company,~~
25 ~~credit union, building and loan association, savings and loan~~
26 ~~association, savings bank, or mutual bank, offices of an~~
27 ~~international banking corporation, branches of foreign banks, a~~
28 ~~corporation organized pursuant to the Bank Service Act, or an~~
29 ~~Edge Act Agreement Corporation organized under the laws of a~~
30 ~~State or the United States, if the person does not issue, sell,~~

1 or provide payment instruments through an authorized delegate
2 that is not such a person;

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

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

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

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

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

26 (10) a person registered as a securities broker-dealer
27 under the federal securities laws to the extent of its operation

1 as such; or

2 (11) [reserved for future use].

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

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

10
11 Proposed exclusions involving boards of trade were submitted to
12 FinCEN by various clearing organizations who collectively
13 represent several of the largest commodities exchanges and
14 commodities/options clearing organizations. In a letter dated
15 October 8, 1997, these organizations recommended that FinCEN
16 change the proposed definition of money services business to
17 exclude regulated entities that are already subject to regulation
18 by the SEC and the CFTC. The September 1998 Draft included a new
19 exclusion under subsection (9) for payment systems operators who
20 provide clearing and/or settlement services. This proposed
21 exemption responded to the comments of Observers who note that
22 the provision of those services is distinct from the issuing or
23 selling of payment instruments or stored value products. This
24 inclusion has been retained.

25
26 ~~————~~ **SECTION 105. LICENSE REQUIRED.**

27 ~~————~~ (a) A person may not engage in a ~~money services~~money
28 services business without:

29 ~~————~~ (1) first obtaining a license under this
30 [Act]; or

31 ~~————~~ (2) becoming an authorized delegate with
32 respect to that business.

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

38 ~~————~~ (c) A person that engages in ~~a money services~~the business

1 only as an authorized delegate of a licensee and acts solely
2 within the scope of a contract between the authorized delegate
3 and the licensee is not required to be licensed under ~~[Article] 2, 3, or~~
4 ~~4. Article 2 or Article 3.~~

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

8 ~~——(d)(e)~~ A license is not transferable or assignable
9 except as otherwise provided ~~by the [superintendent] in this [Act].~~

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

15 12219 Reporter's Note

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

23 **ARTICLE 2**

24 **LICENSING OF MONEY TRANSMITTERS**

25 ~~——SECTION 201. APPLICATION FOR LICENSE.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~_____ (3) material litigation and criminal convictions, for the last five years, of each~~
~~controlling person that is an individual and each responsible individual of the applicant;~~
~~_____ (4) a copy of the applicant's audited financial statements for the current year, and,~~
~~if available, for the next preceding two years; and~~
~~_____ (5) other information the [superintendent] reasonably~~which prohibits the
transfer of check selling licenses.
Reporter's Note: The act will need to distinguish between
authorized delegates who provide services solely pursuant to
contracts with money services businesses and those entities who
serve as delegates but also operate as principals with respect to
some aspect of money services. For example, a check casher might
operate as a principal with respect to check cashing services and
also operate as an authorized delegate for a money transmitter.

ARTICLE 2

LICENSING OF MONEY TRANSMITTERS AND PAYMENT INSTRUMENT SELLERS

SECTION 201. APPLICATION FOR LICENSE.

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

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

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

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

(2) the applicant's material litigation for the past

1 [five] years;

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

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

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

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

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

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

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

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

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

26 (3) a description of the corporate structure of the
27 applicant, including any parent or subsidiary of the applicant,

1 and whether any parent or subsidiary is publicly traded on a
2 national securities exchange;

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

7 (5) the material litigation and criminal convictions of
8 each executive officer, key shareholder, and responsible
9 individual of the applicant;

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

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

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

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

21 (e) If the applicant is not a corporation, the applicant
22 shall also provide the following:

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

25 (2) the legal and any fictitious name, business and
26 residential addresses, personal financial statements, and
27 employment for the past [five] years, for each controlling person

1 that is an individual and each responsible individual of the
2 applicant;

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

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

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

10 ~~——(f) The [superintendent] may waive a~~ (f) The [superintendent] may
11 waive any requirement of this section or permit an applicant to
12 submit substituted information in lieu of the required
13 information.

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

17 **Reporter's Note**

18 **Notes: Selected Issue:** At the February 1998 ~~drafting~~ Drafting
19 Committee meeting, the Drafting Committee decided to create
20 separate licensing, net worth and bonding requirements for both
21 categories of money services licensing provisions for money transmitters (which
22 includes payment instrument sellers and stored-value issuers and sellers) as distinct from check
23 cashers and currency exchangers. It was determined businesses. It was felt that
24 check cashers and currency exchangers posed less safety and
25 soundness concerns because customers ~~who exchanged currency or cashed checks~~
26 were provided with cash ~~immediately.~~

27 immediately. Additionally, Observers stated that check cashers
28 are typically subject to minimal or no net worth requirements.
29

30 As set forth in Articles 2, ~~3~~, and ~~4~~, ~~3~~, separate licensing,
31 recordkeeping and net worth requirements ~~are have been~~ established
32 for money transmitters and for check cashers/foreign currency
33 ~~exchangers-exchanges~~. The superintendent's supervisory and
34 enforcement powers, however, are the same for all ~~money-~~
35 services money services businesses. ~~The licensing requirement promotes~~ This is
36 the approach taken by several states including Florida and

1 Georgia. This is to promote one of the main goals of the
2 Act: Proposed Act which is to create an appropriate regulatory
3 framework to deter and eliminate the use of ~~money services~~money
4 services businesses as potential vehicles for money
5 laundering. ~~Only a handful of states have attempted to create a framework that links all~~
6 ~~money services businesses together within a statute, while recognizing the differences inherent in~~
7 ~~the various activities concerned. Florida and Arizona, for example, are two states that have~~
8 ~~enacted statutes that have uniform enforcement and penalty provisions for all money services~~
9 ~~businesses, while retaining separate licensing and recordkeeping provisions for each type of~~
10 ~~money service activity. The Drafting Committee chose this approach because, for law~~
11 ~~enforcement purposes, the state superintendent and the Attorney General need general~~
12 ~~enforcement powers with respect to each of the different entities as a means of prevention and~~
13 ~~detection of money laundering. Therefore, the Act contains uniform enforcement provisions and~~
14 ~~different licensing requirements for each type of activity.~~

15 The licensing application is the first point at which the state
16 may protect the public ~~by prohibiting from permitting~~ entry by those
17 persons ~~that who~~ would bring discredit on the industry; and the
18 first source of information for investigators and regulators in
19 the event that there is future misconduct by ~~a licensee. The information~~
20 ~~requested from the licensee.~~

21 ~~money transmitter applicants in Section 201 is the type of information recommended by~~
22 ~~the Money Transmitters Regulators' Association in Section IV of the Model Legislation Outline~~
23 ~~and also in the Model Act Regulating Money Transmitters. The information concerning criminal~~
24 ~~convictions and employment histories, as well as the identity of executive officers, key~~
25 ~~shareholders, controlling persons and responsible individuals is designed to assist the~~
26 ~~superintendent in determining whether the license applicant is a reputable business or whether~~
27 ~~there are any suggestions that the business might be used for illegal purposes. Additionally,~~
28 ~~information relating to the applicant's financial position (including information about net worth)~~
29 ~~is necessary in order to determine whether an applicant will be able to meet its obligations with~~
30 ~~respect to any obligations it might have (in connection with the sale of money orders, traveler's~~
31 ~~checks and stored value and funds transfer).~~

32
33 At the October 1998 Drafting Committee meeting, it was decided
34 that stored value providers should be required to obtain licenses
35 under the Proposed Act. At present, stored value instruments are
36 encompassed within the definition of payment instruments. In
37 1998, Connecticut enacted the Act Concerning Electronic Payment
38 Instruments and Currency and Foreign Transactions Reporting. This
39 act amended existing money transmission legislation so that
40 stored value products (referred to as "electronic payment
41 instruments") are treated as payment instruments. Furthermore,
42 issuers of such payment instruments are subject to licensing and
43 regulation in Connecticut. See CT. Legis. 98-192 cited in 1998
44 Conn. Legis. Serv. P.A. 98-192 (S.S.B. 230) (West). West Virginia
45 also adopted new legislation designed to amend its current money
46 transmission legislation. West Virginia's legislation includes
47 stored value within the definition of money transmission. 1998

1 West Virginia Laws Ch. 73 (H.B. 4591). As in Connecticut, this
2 triggers licensing and other requirements for stored value
3 providers. Texas has also interpreted its sale of checks statute
4 to apply to smart cards issued by non-banks for use in open
5 networks. See Remarks of Catherine A. Ghiglieri, Texas Department
6 of Banking to the PULSE EFT Assoc. Member Conference (October 11,
7 1996) located at www.banking.state.tx.us/exec/speech10a.
8

9 ~~SECTION 202. SECURITY.~~

10 (SUBSECTIONS (a) AND (b) ALTERNATIVE 1)

11 ~~(a) A~~ (a) An application for a license, under this
12 article, must be accompanied by a surety bond, irrevocable letter
13 of credit, or other similar security acceptable to the
14 [superintendent]; in the amount of [\$50,000] ~~must accompany an application~~
15 ~~for a license.~~

16 ~~(b) If an applicant proposes to engage in the business at~~
17 ~~more than one location through authorized delegates or otherwise,~~
18 ~~the amount of the security is increased by [\$10,000] per~~
19 ~~location, not exceeding a total increase of to exceed~~ [\$250,000].

20 The [superintendent] ~~may, however, increase the amount of security required to a maximum of~~
21 ~~[\$500,000] upon the basis of the impaired financial condition of a licensee, as evidenced by net~~
22 ~~worth reduction, financial losses, or other relevant criteria.~~

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

1 ~~—— (d) The aggregate liability on a surety bond may not exceed the principal sum of the~~
2 ~~bond. A claimant against a licensee may maintain an action directly on the bond or the~~
3 ~~[superintendent] may maintain an action on behalf of the claimant. The bond must be payable to~~
4 ~~any person injured by a wrongful act, omission, default, fraud, or misrepresentation of a licensee~~
5 ~~or an authorized delegate or employee of the licensee in the conduct of its business as a licensee~~
6 ~~or to the State for the benefit of the [superintendent] and of the injured person. Only one bond is~~
7 ~~required of a licensee irrespective of the number of executive officers, directors, locations,~~
8 ~~employees, or authorized delegates of the licensee.~~

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

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

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

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

~~and (b) ALTERNATIVE 2)~~

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

~~(b) Each application under this article shall be accompanied by, and each licensee shall maintain at all times, a bond executed by the licensee as principal and a surety company authorized to do business in this State as surety. The bond shall be in the amount of [\$25,000] for a licensee with five or fewer authorized delegates and locations; [\$100,000] for a licensee with more than five but fewer than [21] authorized delegates and locations; and an additional [\$5,000] for each authorized delegate and location in excess of [20] but fewer than [200] authorized delegates and locations, to a maximum of [\$250,000] and an additional [\$5,000] for each authorized delegate and location in excess of [200] authorized delegates and locations, to a maximum of [\$500,000].~~

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

Reporter's Note: At present, money services businesses that engage solely in check cashing or currency dealing and exchange do not have to post bond or a security device. Alternative 1 which is derived mainly from the President's Commission Act attempts to provide a uniform standard for all money services

1 businesses. An alternative would be to create different security
2 requirements based on the number of locations or authorized
3 delegates, which the licensee utilizes within a state. The
4 Drafting Committee has not yet made a decision as to which of
5 these two options is preferable.

6
7 (c) The aggregate liability on a surety bond may not exceed
8 the principal sum of the bond. A claimant against a licensee may
9 commence and maintain an action directly on the bond or the
10 [superintendent] may commence and maintain an action on behalf of
11 the claimant. The bond must be payable to a person injured by the
12 wrongful act, omission, default, fraud, or misrepresentation of a
13 licensee or an authorized delegate or employee of the licensee in
14 the conduct of its business as a licensee or to the State for the
15 benefit of the [superintendent] and of the person injured. Only
16 one bond is required of a licensee irrespective of the number of
17 officers, directors, locations, employees, or authorized
18 delegates of the licensee.

19 (d) An irrevocable letter of credit must run to the State,
20 for the benefit of the [superintendent] and for the benefit of
21 any person injured by a wrongful act, omission, default, fraud,
22 or misrepresentation of a licensee or an authorized delegate or
23 employee of the licensee in the conduct of its business as a
24 licensee. Draws upon an irrevocable letter of credit must be
25 available by sight drafts in amounts determined by the
26 [superintendent] up to the aggregate amount of the irrevocable
27 letter of credit.

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

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

11 **Source:** President's Commission Act Section 8; Delaware Code,
12 Chapter 27, Section 2714.

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

16
17 (g) In lieu of the security prescribed in this section, an
18 applicant or a licensee may deposit with the [superintendent]
19 cash, or alternatives to cash acceptable to the [superintendent],
20 in the amount of the required security. The principal amount of
21 the deposit may be released to the applicant or licensee only
22 upon written authorization of the [superintendent] or on the
23 order of a court of competent jurisdiction.

24 **Source:** Arizona Money Transmitter Act Section 6-1205; President's
25 Commission Act Section 8.

26 **Reporter's Note**

27 ~~The bond and~~ **Note:** Bonding or net worth requirements are safety and
28 soundness measures designed to protect the public, but also to
29 deter companies that have questionable solvency or business
30 practices from entering the market. The bond requirement serves as
31 a barrier to entry for financially unstable companies. ~~Alternatives to the~~
32 ~~bond requirement.~~ Alternatives, however, are provided to the bond
33 requirement in the form of cash or ~~letters of credit.~~ cash alternatives.
34 Licensees may also be permitted to deposit specified liquid

1 assets in the amount of the bond. The Drafting Committee ~~has~~
2 ~~attempted~~will need to strike a balance between the goals of safety
3 and soundness and ~~of also~~ providing open access to businesses
4 ~~that who~~ wish to enter the money ~~transmission market, recognizing that decisions as~~
5 ~~to the final dollar amounts will need to reflect the particular fiscal needs and concerns of~~
6 ~~different states.~~services market.

7
8 Some Observers have queried how claimants may obtain cash in the
9 event of a problem with the licensee meeting its obligations. The
10 Drafting Committee may wish to consider whether additional
11 guidance should be provided concerning security devices.

12
13 ~~SECTION 203. ISSUANCE OF LICENSE.~~

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

24 ~~(1)~~ (1) the applicant has complied with Sections
25 201 and 202;

26 ~~(2)~~ (2) the competence, experience, character,
27 and general fitness of the~~executive~~ officers, directors, and
28 controlling persons,and any proposed management personnel
29 indicate that it is in the interest of the public to permit ~~the~~
30 ~~applicant to engage in money transmission;~~each of them to participate in the
31 money services business of the licensee; and

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

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

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

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

Reporter's Note

The Note: At the February 1998 Drafting Committee ~~has~~
~~previously~~meeting, the Drafting Committee inquired as to whether
states ~~have~~had mandatory time frames in which the
~~superintendent~~regulator must respond to license applications. The
Money Transmitters' Regulators Association ("~~MTRA~~") representative
supplied the Drafting Committee with sample statutory provisions
that included mandatory time frames for response to a license
application. In Tennessee, the time Based on existing state practice, the
~~Drafting Committee decided on a 120 day response period. period is 180 days rather~~

1 | than 120. The MTRA Model Legislation Outline recommends a 120-day
2 | time period. The extension for "good cause" comes from the Maine
3 | Act to Regulate Money Transmitters and Amend Consumer Credit
4 | Laws, 32 M.R.S.A. Section 6109(2).

5 | ~~SECTION 204. RENEWAL OF LICENSE.~~

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

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

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

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

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

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

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

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

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

10 **~~Reporter's Note~~**

11
12 **SECTION 204. RENEWAL OF LICENSE.**

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

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

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

25 (1) a copy of the licensee's most recent audited

1 consolidated annual financial statement or, if the licensee is a
2 wholly owned subsidiary of another corporation, the consolidated
3 audited annual financial statement of the parent corporation or
4 the licensee's annual audited financial statement;

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

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

17
18 (3) a description of each material change to
19 information submitted by the licensee on its original license
20 application which has not been previously reported to the
21 [superintendent] on any required report;

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

23 (5) a list of the locations in this State at which
24 either the licensee or an authorized delegate engage in the
25 business.

26 (d) The [superintendent] shall notify in writing a licensee
27 under this article that has not filed a renewal report or paid
28 its renewal fee by the renewal date and has not been granted an
29 extension of time to do so by the [superintendent] that its
30 license has been suspended. The licensee has [30] days after the
31 date of receipt of the notice of suspension to file a renewal
32 report and to pay the renewal fee plus [\$100] for each day the

1 renewal form and application are not received by the
2 [superintendent]. If the licensee does not so file and pay within
3 [30] days after the date of receipt of the notice of suspension,
4 the license is permanently revoked.

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

6 **Reporter's Note:** The alternative to a provision which
7 outlines the contents of an annual renewal report is for the
8 regulator to prescribe the contents of a renewal application by
9 regulation. The Model Money Transmitters The Drafting Committee
10 decided Licensing and Regulation Act contains a provision which
11 takes this approach. The current renewal provisions in
12 subparagraph c have been modified. Both the Drafting Committee
13 and Observers noted that it was too cumbersome to have a hearing
14 provision for failure to renew a license. The Drafting Committee
15 decided that a preferable alternative was for the license to
16 expire if not renewed in a timely fashion. The licensee, however,
17 will~~shall~~ have 30 days to cure its failure to renew its license.
18 ~~As part of the renewal process, Article 2 licensees are required to submit additional information~~
19 ~~to the superintendent as a means of appraising the safety and soundness of the business.~~

20 Additionally, some Observers noted that Section 306(2)
21 (Alternative 2) which was contained in the February 1998 draft
22 was a useful provision. This Section included a —SECTION 205.
23 ~~FEES,~~ penalty of \$100 per day for late filing of a renewal
24 application. Current Section 203 has been modified to include
25 such a penalty.

26
27 ~~(a) A nonrefundable application fee of [\$2,000] and a license fee of [\$2,000]~~ **SECTION**
28 **205. APPLICATION LICENSE AND FEES.** A non-refundable application
29 fee of [\$1,000] and a license fee of [\$3,000] must accompany an
30 application for a license under this {article}-article. The license
31 fee must be refunded if the application is denied.

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

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

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

1 **~~Reporter's Note~~**

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

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

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

9 **~~Reporter's Note~~**

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

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

21 **ARTICLE 3**

22 **LICENSING OF CHECK CASHERS**

23 ~~SECTION 301. APPLICATION FOR LICENSE.~~

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

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

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

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

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

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

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

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

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

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

Reporter's Note

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

~~A new provision has been added to require that check cashers provide superintendents with information about the source of their funds. Superintendents and law enforcement officials want to ensure that the cash used in such a business is not derived from money laundering or other illegal activity. For a general discussion of the main differences between Article 2 and~~

Articles 3 and 4 see the Reporter's Note to Section 201 (which also explains the rationale for separate licensing requirements for different types of money services businesses). The Note to Section 201 also discusses the reasons why certain types of information are requested from applicants during the application process.

~~SECTION 302. ISSUANCE OF LICENSE.~~

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

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

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

~~(3) the applicant has paid the requisite application and license~~Note: The Drafting Committee decided to omit any references to license fees being placed in a separate fund for the exclusive use of the Superintendent for the administration and enforcement of the [Act].

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

Source: President's Commission Act Section 8.

Reporter's Note: An alternative to a general net worth requirement is to provide varying net worth requirements for different types of money services businesses. For example, Section 36a-604 of the Connecticut Money Order and Travelers Check Licensees Act requires that check sellers and money

1 transmitters requires that each licensee that issues money orders
2 must have a net worth of at least \$100,000. Issuers of travelers
3 checks must have a net worth of at least \$1 million.

4 5 ARTICLE 3

6 LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS

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

15
16 The Drafting Committee should consider whether the current
17 licensing regime set forth in Article 3 will create any material
18 differences for check cashers who are authorized delegates as
19 opposed to check cashers who are not authorized delegates (and
20 thus required to obtain a license) with respect to the level of
21 recordkeeping and reporting required of both entities.

22
23 As a general matter, the Drafting Committee should consider
24 whether it might be useful to use a different term for licensing
25 under Article 4 that will differentiate between the two different
26 licensing schemes in the Proposed Act. Some Observers have
27 suggested the term "license" for money transmitters and stored
28 value providers and the term "registration" for check cashers and
29 currency exchangers.

30 31 SECTION 301. APPLICATION FOR LICENSE.

32 (a) A person that is not an authorized delegate of a
33 licensee under Article 2 or that is not licensed under Article 2
34 may not engage for consideration in check cashing or currency
35 exchange without first obtaining a license under this article.

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

40 (c) An applicant for a license under this article must apply
41 in writing, under oath, and in the form prescribed by the

1 [superintendent]. The application must include the following:

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

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

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

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

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

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

19 **Source:** Florida Money Transmitters' Code Sections 560.304 and
20 305.

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

1
2 A new provision has been added to require that check cashers
3 provide regulators with information about the source of their
4 funds. This is a concern to regulators and to law enforcement
5 officials who want to ensure that the cash used in such a
6 business are not derived from money laundering or other illegal
7 activity. If check cashers who are authorized delegates are
8 exempt from the licensing provisions of Article 3, the Drafting
9 Committee should consider whether the source of funds requirement
10 should be moved to another Section of the Proposed Act and
11 applicable to all money services businesses.
12

13 **SECTION 302. ISSUANCE OF LICENSE.**

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

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

24 (2) the competence, experience, character, and general
25 fitness of the officers, directors, and controlling persons, and
26 any proposed management personnel indicate that it is in the
27 interest of the public to permit each of them to participate in
28 the money services business of the licensee; and

29 (3) the applicant has paid the required license and
30 application fees.

31 ~~——(b) The [superintendent] shall approve or deny an application for an original~~
32 ~~license within 120 days after a complete application is filed. The [superintendent] for a good~~
33 ~~cause may extend the period.~~ (b) The [superintendent] shall approve or

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

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

13 ~~**Source:** Arizona Revised Statutes Section 6-1206(B); Tennessee Revised Code Section 45-7-~~
14 ~~210.~~

15 ~~**Reporter's Note**~~

16 ~~See the Reporter's Note accompanying Section 202.~~

17 ~~**SECTION 303. RENEWAL OF LICENSE.**~~

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

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

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

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

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

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

14 **~~Reporter's Note~~**

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

22 ~~_____ **SECTION 304. FEES.** (c) An applicant that is denied a~~
23 ~~license by the [superintendent] under this article may appeal the~~
24 ~~denial within [30] days after receipt of the written notice of~~
25 ~~the denial in a hearing before the [administrative law judge]~~
26 ~~pursuant to the [state administrative procedures act].~~

27 **~~Source:~~** Arizona Revised State Section 6-1206(B); Tennessee Rev.

1 Code Section 45-7-210.

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

13
14 **SECTION 303. RENEWAL OF LICENSE.**

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

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

21 (c) A licensee shall pay an annual fee for the renewal of a
22 license. The licensee shall submit with the renewal fee a report,
23 in a form prescribed by the [superintendent]. The
24 [superintendent] shall send a copy of the form to each licensee
25 under this article no later than [three months] immediately
26 before the date for license renewal. The renewal report must
27 contain:

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

32 (2) a list of the locations in this State at which
33 either the licensee or an authorized delegate of the licensee
34 engage in the business.

1 (d) The [superintendent] shall notify in writing a licensee
2 under this article that has not filed a renewal report or paid
3 its renewal fee by the renewal date and has not been granted an
4 extension of time to do so by the [superintendent] that its
5 license has been suspended. The licensee has [30] days after the
6 date of receipt of the notice of suspension to file a renewal
7 report and to pay the renewal fee plus [\$100] for each day the
8 renewal form and application are not received by the
9 [superintendent]. If the licensee does not so file and pay within
10 [30] days after the date of receipt of the notice of suspension,
11 the license is permanently revoked.

12 **Source:** Model Act Regulating Money Transmitters, Section 11 (with
13 modifications).

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

31
32 ~~(a) — A nonrefundable application fee of [\$2,000] and a license fee of [\$2,000] must~~
33 ~~accompany an application for a license under this [article].~~ **SECTION 304. APPLICATION**
34 **AND LICENSE FEE.** A non-refundable application fee of [\$1,000] and
35 a license fee of [\$3,000] must accompany an application for a
36 license under this article. The license fee must be refunded if
37 the application is denied.

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

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

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

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

~~See the Reporter's Note accompanying Section 205.~~

~~**ARTICLE 4**~~

~~**LICENSING OF CURRENCY EXCHANGERS**~~

~~**SECTION 401. APPLICATION FOR LICENSE.**~~

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

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

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

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

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

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

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

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

4 ~~Reporter's Note~~

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

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

20 ~~SECTION 402. ISSUANCE OF LICENSE.~~

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

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

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

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

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

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

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

~~See the Reporter's Note accompanying Section 202.~~

~~**SECTION 403. RENEWAL OF LICENSE.**~~

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

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

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

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

8
9 ~~_____ (2) a list of the locations in this State where~~**SECTION 305. NET WORTH. A**
10 licensee under this article shall maintain a net worth in liquid
11 assets of at least [\$10,000] for each location at which the
12 licensee or an authorized delegate of the licensee engages in
13 ~~currency exchange.~~

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

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

21 **Reporter's Note** See the Reporter's Note accompanying Section 204. The Drafting
22 Committee decided to require check cashers and currency exchangers to renew their licenses
23 biennially rather than annually. Because check cashers and currency exchangers pose no safety
24 and soundness concerns, the superintendent does not have a need to check cashing or
25 currency exchange and at least [\$2,500] for each mobile location
26 or limited facility.

27 **Source:** Connecticut Code Section 36a-581(e) (6) .

1 **Reporter's Note:** As Observers noted at the February 1998 meeting,
2 check cashers are required to have much lower net worth and bond
3 requirements. This is due primarily to the fact that check
4 cashers and currency exchangers provide customers with funds
5 immediately unlike money transmitters and payment instrument
6 sellers. Check cashers are required to maintain anywhere from
7 \$5,000 in liquid assets per location up to \$50,000 (New Jersey).
8 Other states also require that the check casher maintain an
9 "adequate" bond (e.g., Massachusetts).

10 11 **ARTICLE 4**

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

15 ~~SECTION 404. FEES.~~

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

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

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

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

22 ~~**Reporter's Note**~~

23 ~~See the Reporter's Note accompanying Section 205.~~

24 **ARTICLE 5**

25 **AUTHORIZED DELEGATES**

26 ~~SECTION 501. SECTION 401.~~ **RELATIONSHIP BETWEEN LICENSEES**
27 **AND AUTHORIZED DELEGATES.**

28 ~~(a)~~ (a) A contract between a licensee and an authorized
29 delegate must require the authorized delegate to operate in full
30 compliance with this [Act]. The licensee shall ~~furnish in a record~~
31 ~~to provide~~ each authorized delegate with written policies and

1 procedures sufficient to permit compliance with this [Act].

2 | — (b) An authorized delegate shall remit all ~~money~~funds
3 owing to the licensee in accordance with the terms of the
4 contract between the licensee and the delegate.

5 | — (c) Upon the suspension or revocation of a license or
6 the failure of a licensee to renew its license, the
7 [superintendent] shall notify all authorized delegates of the
8 licensee whose names are on record with the [superintendent] of
9 the ~~suspension, revocation, or failure to renew.~~ [superintendent's] action. On
10 receipt of the notice, an authorized delegate shall immediately
11 cease to engage in the business as a delegate of the licensee.

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

13 ***Reporter's Note***

14 ~~The sections included in Article 5 are meant to further delineate the nature of the authorized~~
15 ~~delegate's relationship with the licensee and to further clarify the delegate's responsibilities and~~
16 ~~obligations. Similarly, this section also sets forth some of the general obligations that the~~
17 ~~licensee has with respect to providing the delegate with a contract and making the delegate~~
18 ~~aware of relevant laws and rules.~~ **Note:** Section 401 (formerly Section 501 in
19 the February 1998 draft) contains substantial revisions. The
20 following provisions were omitted:

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

31 | — ~~SECTION 502.~~ SECTION 402. **SCOPE OF AUTHORIZED DELEGATE'S**

33 **ACTIVITY.** An authorized delegate may not ~~intentionally~~knowingly
34 engage in ~~the business that~~activity which is outside the scope of
35 activity permissible under the contract between the authorized

1 | delegate and the licensee, except ~~activity for which the authorized delegate is~~
2 | ~~licensed under [Article] 2, 3, or 4, as provided in Section 105(d).~~ An
3 | authorized delegate of a licensee holds in trust for the benefit
4 | of the licensee all money s net of fees received from ~~money~~
5 | ~~transmission.~~

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

7 | **Reporter's Note**

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

18 | ~~SECTION 503.~~ SECTION 403. **UNAUTHORIZED ACTIVITIES.** A
19 | person may not engage in conduct as an authorized delegate of a
20 | person that is not licensed under this [Act]. A person that
21 | engages in that conduct is engaging in the business to the same
22 | extent as if the person were the principal.

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

25 | **Reporter's Note**

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

~~ARTICLE 6~~

EXAMINATIONS; REPORTS AND OTHER **Note:** It is important to clearly delineate the rights and duties of a licensee and his or her authorized delegate. This Section defines the relationship between the parties and includes the imposition of a trust for the benefit of the licensee for moneys received by the delegate from the sale of the licensee's products or services.

ARTICLE 5.

EXAMINATIONS, REPORTS, AND RECORDS

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

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

If the licensee or authorized delegate is engaging in an unsafe or unsound ~~practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act],~~ practice, the [superintendent] may examine the licensee or its authorized delegate without having given notice.

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

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

3 **Reporter's Note**

4 This section provides the superintendent with general authority to conduct on-site
5 ~~supervisory exams of licensees and their~~ **Reporter's Note:** The previous
6 ~~subsection (b) has been merged into subsection (a) with respect~~
7 ~~to the examination of~~ authorized delegates. ~~This provision is essential to~~
8 ~~ensure the safety and soundness of licensees and enable the superintendent to examine a~~
9 ~~licensee's books and records in the event that it is suspected~~ In the February 1998
10 draft an additional modification has been made. Previously, of
11 money laundering or any other violation of the Act. Subsection (a) permits the superintendent to
12 examine a licensee or its delegates without advance notice if the licensee is engaging in an
13 ~~unsafe or unsound practice or has violated the Act. Previously, this section~~ 801 (a) stated
14 that the superintendent had to have a reason to believe that the
15 licensee or authorized delegate was engaging in an unsafe or
16 unsound practice. ~~It was noted, however, Some Observers have noted~~ that
17 this is an ambiguous ~~standard~~ term that may hinder the
18 superintendent's ability to examine licensees and delegates in a
19 timely fashion (i.e., because licensee will be able to challenge
20 the examination). ~~Additionally, it was~~ Some Observers have noted that
21 superintendents have not abused this authority where it has been
22 given to them by statute. Furthermore, some regulators have
23 observed that resource constraints provide a natural check on
24 abuse of examination authority.

25 authority. As with several other Subsection (b) allows the superintendent to
26 ~~waive an annual on-site examination for licensees. It gives the superintendent flexibility in~~
27 ~~dealing with reputable licensees. For example, if a licensee has been licensed for several years,~~
28 ~~has maintained adequate financial resources, and has been cooperative with regulators, the~~
29 ~~superintendent may determine that annual examinations are not necessary. The waiver also~~
30 ~~conserves financial resources of the superintendent.~~ provisions in this Proposed
31 Act, the Drafting Committee and Observers need to further
32 ~~consider the appropriate balance between industry concerns and~~
33 ~~the needs of the regulator and law enforcement.~~
34

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

36 (a) An on-site examination of books, records, accounts,
37 ~~documents, and other records~~ and documents listed in Section ~~605~~ 505 may be
38 conducted in conjunction with representatives of other ~~state~~ State
39 agencies or agencies of another ~~State~~ state or of the federal
40 government as determined by the [superintendent]. In lieu of an
41 examination, the [superintendent] may accept the examination

1 | report of an agency of this State or of another ~~State~~state or of
2 | the federal government or a report prepared by an independent
3 | licensed or certified public accountant. A joint examination or
4 | an acceptance of an examination report is not a waiver of the
5 | [superintendent's] authority to conduct an examination as
6 | provided by law. A joint report or a report accepted under this
7 | subsection is an official report of the [superintendent] for all
8 | purposes.

9 | — (b) Information obtained during an examination under
10 | this [Act] may be disclosed only as provided in Section ~~608.509.~~

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

12 | ***Reporter's Note***

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

20 | ~~SECTION 603.~~

21 | SECTION 503. REPORTS.

22 | — (a) A licensee shall file with the [superintendent]
23 | within ~~45~~[45] days after the end of each ~~fiscal quarter a current~~[fiscal
24 | quarter] a consolidated financial statement including a balance
25 | sheet, income and expense statements, and a list of all
26 | authorized delegates, responsible individuals, and locations ~~in~~
27 | ~~this State.~~within this State which have been added or terminated by
28 | the licensee within the [fiscal quarter]. The licensee ~~must state~~
29 | ~~or shall~~ include the name and street address of each location and

1 authorized delegate.

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

5 ~~_____~~ (1) the filing of a petition under the United
6 States Bankruptcy Code for bankruptcy or reorganization by the
7 licensee;

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

11 (3) the licensee's inability to pay its debts as they
12 mature;

13 ~~_____~~ ~~(3)~~ (4) the cancellation, interruption, or non-
14 renewal of the licensee's bond, letter of credit; or other
15 security;

16 ~~(4) an~~ (5) a felony [indictment], prosecution, or
17 conviction of the licensee or of an ~~executive~~ officer, director, ~~or~~
18 controlling ~~person of a felony related to activities regulated under this [Act] or involving a~~
19 ~~violation of state or federal money laundering laws; or~~

20 ~~_____~~ ~~(5) an [indictment], prosecution, or conviction of an~~ person,
21 responsible individual, or authorized delegate of ~~a felony of which~~
22 ~~at the~~ licensee ~~has knowledge~~ related to activities regulated under
23 this [Act] or involving ~~a violation of state or federal~~ money laundering
24 ~~laws or unlawful activity specified by the [superintendent] by~~
25 rule.

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

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

8 ***Reporter's Note***

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

26
27 ~~SECTION 604.~~ SECTION 504. **CHANGE OF CONTROL.**

28 ~~SECTION 604.~~ (a) A person or group of persons that proposes to
29 acquire control shall give written notice to the [superintendent]
30 and request approval of the acquisition~~and also submit a nonrefundable fee~~
31 ~~of [\$2,000].~~

32 ~~SECTION 604.~~ (b) A licensee whose ~~voting securities or voting interests~~shares are
33 traded on ~~an organized~~ a national securities exchange shall give the
34 [superintendent] written notice of a proposed change of control
35 within [15] days after learning of the proposed change of

1 control.

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

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

14 | — (e) The [superintendent] ~~shall approve~~may deny a request
15 | for approval under subsection (a) if, after investigation, the
16 | [superintendent] determines that the person or group of persons
17 | requesting approval ~~has~~does not have the competence, experience,
18 | character, and general fitness to operate the licensee or
19 | controlling person in a lawful and proper manner and that the
20 | interests of the public ~~will not~~may be jeopardized by the change of
21 | control.

22 | — (f) This section does not apply to the following
23 | persons or transactions:

24 | — (1) a registered dealer that acts as an
25 | underwriter or member of a selling group in a public offering of
26 | the voting securities~~or voting interests~~ of a licensee or controlling

1 person of a licensee;

2 _____ (2) a person that acts as a proxy for the
3 sole purpose of voting at a designated meeting of the security
4 holders~~or holders of voting interests~~ of a licensee or controlling person
5 of a licensee;

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

9 _____ (4) a person that acquires control as a
10 personal representative, custodian, guardian, conservator,~~or~~
11 trustee, or ~~as another~~ officer appointed by a court of competent
12 jurisdiction or by operation of law;

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

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

19 _____ (g) Before filing a request for approval to acquire
20 control, a person may request in writing a determination from the
21 [superintendent] as to whether the person would be considered a
22 controlling person upon consummation of ~~at~~the proposed
23 transaction. If the [superintendent] determines that the person
24 ~~would~~will not be a controlling person, the [superintendent] shall
25 enter an order to that effect and the proposed person and
26 transaction ~~will~~is~~are~~ not~~be~~ subject to the requirements of

subsections (a) through (e).

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

Reporter's Note

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

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

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

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

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

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

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

~~(4) bank statements and bank reconciliation records;~~

~~(5) records of outstanding payment instruments;~~

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

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

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

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

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

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

Reporter's Note

~~This section combines the more general reporting provisions of the Florida Money Transmitters' Code Section 560.310 and the more detailed reporting requirements contained in Section 15 of the Model Act Regulating Money Transmitters. The Drafting Committee determined that the statutory prescription for recordkeeping should be a minimum and that additional books and records might be required by rule, if needed. Therefore, the current Section 605 is an amalgamation of two previous provisions. The reporting requirements contained in Section 605 pertain mainly to money transmitters (with respect to the sale of payment instruments). Most check-cashing and currency exchange law simply states that the licensee must maintain books and records as required by rule. Both Committee members and Observers were in agreement with a three-year record retention period. The record retention period also reflects existing state practice.~~
Note: In February 1998, the Drafting Committee objected to Section 504 dealing with change in control. The previous provision required prior written approval from the superintendent before acquisition of a money services business. The current provision requires notice rather than prior approval in all instances (i.e., both for publicly held companies and other entities).

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

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

(1) a record of each payment instrument sold;

1 (2) a record of each payment instrument cashed;
2 (3) a general ledger posted at least monthly containing
3 all assets, liability, capital, income, and expense accounts;
4 (4) settlement sheets received from authorized
5 delegates;
6 (5) bank statements and bank reconciliation records;
7 (6) records of outstanding payment instruments;
8 (7) records of each payment instrument paid within the
9 [three]-year period;
10 (8) a list of the names and addresses of all of the
11 licensee's authorized delegates; and
12 (9) any other books, records, accounts, and documents
13 that may be prescribed by the [superintendent] by rule.

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

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

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

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

34
35 As noted in the September 1998 Draft, most check cashing and
36 currency exchange legislation simply states that the licensee

1 must maintain books and records as required by regulation. Unlike
2 money transmission statutes, the actual details of the
3 recordkeeping are done through regulation. For check cashers,
4 minimum books and records often include:

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

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

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

28 **SECTION 506. RECORDS OF TRANSACTIONS.**

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

34 (b) For each transaction involving the receipt of funds from
35 a customer, a licensee or an authorized delegate that receives
36 the money shall maintain a written record of the transaction. The
37 record may be reduced to an electronic or optical medium. The
38 record must contain the name of the licensee, the street address
39 of the location at which the money was received, the name and
40 street address of the customer if reported to the licensee or
41 authorized delegate, and the approximate date of the transaction.

The records collectively must contain the name or other information from which the [superintendent] can determine the identity of the employees of the licensee or authorized delegate that engaged in a transaction, and the amount of the transaction. The information required by this section must be available from the licensee or authorized delegate for at least [three] years after the date of the transaction.

Source: President's Commission Act Section 15.

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

~~SECTION 506.~~ **SECTION 507. MONEY LAUNDERING REPORTS.**

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

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

~~(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is deemed~~ compliance with the reporting requirements of subsection (a), unless the ~~[superintendent] notifies the licensee that the~~ **Source:** Abbreviated version of Florida Money Transmitter Code Section [attorney general] has notified the [superintendent] that reports of this type are

1 not being regularly and comprehensively transmitted by the
2 federal agency to the [attorney general].

3 ~~560.128 and~~Source: President's Commission Model Financial
4 Transaction Reporting Act, Section 5 (Reports to the Attorney
5 General).

6 **~~Reporter's Note~~**

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

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

24
25 Another Observer has suggested that the Proposed Act should
26 encapsulate all of the provisions of the Model Financial
27 Transaction Reporting Act, a complementary statute to the
28 President's Commission Model Law on Money Transmitters. A copy of
29 this model act has been included as an appendix to the Third
30 Draft cover memo for the Drafting Committee's reference. As an
31 alternative, the Observer has also suggested that Section 507 be
32 deleted entirely with reference made to the Model Financial
33 Transaction Reporting Act (with changes to reflect the federal
34 forms required and the data available to State and local
35 authorities through shared databases).

36
37 Some of the suggested weaknesses with the current provision are
38 that no specific violation is created for non-compliance and that
39 there is no violation for licensees or authorized delegates who
40 either evade currency/transaction reporting requirements or who
41 structure transactions so as to avoid reporting requirements. The
42 Drafting Committee needs to consider whether structuring and
43 evasion of reporting requirements should be specific violations
44 under the Proposed Act and whether such violations will have
45 civil and/or criminal liabilities attached to them.

46 **Selected Issue:** Should the Draft NDP Act be more explicit and
47 detailed concerning the types of transactions for which money

1 services businesses must file and maintain reports for State
2 regulators (as opposed to federal reports)?

3 **Discussion:** Approximately ten states require that a ~~money-~~
4 ~~services~~money services business comply with all federal and state
5 ~~money-laundering~~money laundering and currency transaction reporting
6 laws. State laws typically replicate the federal law and require
7 that cash transactions in excess of \$10,000 be reported to a
8 state authority; as well as to the U.S. Treasury. Most of the
9 state reporting ~~law~~legislation does not specifically address
10 ~~money-services~~money services businesses (but may apply to ~~money-~~
11 ~~services~~money services businesses by implication). Several states;
12 including Colorado, Connecticut, Idaho, Indiana and Oklahoma;
13 require financial institutions to file suspicious activity
14 reports concurrently with Federal and ~~state~~State authorities.
15 Arizona has its own suspicious activity form for financial
16 institutions. Suspected ~~money-laundering~~money laundering activities
17 are reported to Arizona's Attorney General on a one-page form.
18 Georgia ~~provides~~states that each financial institution ~~must~~shall
19 keep a record of currency transactions in excess of \$10,000 and
20 that those reports ~~must~~shall be filed with ~~the state~~this State within
21 15 days of the ~~transaction~~.

22 transaction. The Georgia Department of Banking and Finance,
23 however "may promulgate regulations that permit currency
24 transaction reports filed by financial institutions with federal
25 agencies pursuant to requirements of federal law to satisfy the
26 currency transaction filing requirements . . . provided that the
27 department . . . will have access to the currency transaction
28 reports filed with the federal agencies." Georgia Financial
29 Institutions Code Section 7-1-912.

30 **Selected Issue:** Should the proposed Act also include specific
31 prohibitions against evading currency-reporting requirements
32 (under either Federal or State law) and also against the
33 structuring of transactions? (i.e., the division of a transaction
34 that would trigger currency reporting or Bank Secrecy Act
35 reporting requirements into two or more transactions that are not
36 reportable). Some states explicitly prohibit such actions as part
37 of their criminal code or as part of their money transmission
38 regulations.

39
40 Georgia, for example, prohibits the evasion of reporting
41 requirements and also structuring. It requires financial
42 institutions (including money services businesses) to keep
43 records of currency transactions in excess of \$10,000. In
44 addition to recordkeeping requirements, Georgia also has
45 provisions relating to the evasion of reporting requirements. For
46 example, it is a misdemeanor for a person to:

- 47 • cause or attempt to cause a financial institution to fail to
48 file a currency transaction report;
- 49 • cause or attempt to cause a financial institution to file a
50 report that contains a material omission or misstatement of

1 fact; or
2 • structure or assist in structuring, or attempt to structure
3 or assist in structuring, any currency transaction with one
4 or more financial institutions
5 See Georgia Code 7-1-912(d), 7-1-915(a).
6

7 ~~SECTION 508.~~ **SECTION 508. ELECTRONIC FILING OF RECORDS.**

8 The [superintendent], by rule, may order that an application,
9 report, or record that is required to be filed pursuant to [this
10 Act] be filed electronically.

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

13 **Reporter's Note**

14 **Note:** This provision is included in a series of proposed
15 amendments to the Florida Money Transmitters' Code that have been
16 drafted by the Florida State Department of Banking. These
17 amendments have not been put before the Florida Legislature. At
18 the October 1998 ~~drafting~~Drafting Committee meeting, there was a
19 general sentiment that there needed to be some provision for the
20 submission of records electronically; as well as in writing.
21

22 ~~SECTION 608.~~ **SECTION 509. CONFIDENTIALITY OF RECORDS.**

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

31 ~~(b)~~ (b) The [superintendent] may disclose confidential
32 information pertaining to a licensee ~~and~~or authorized delegate to
33 the following persons:

34 ~~(1) the attorney general of this State;~~ (1) a representative

1 of a federal agency insuring accounts of the licensee or
2 authorized delegate;

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

12 (3) the attorney general of this State;

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

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

17 _____ (c) The [superintendent] may:

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

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

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

5 report for general statistical information.

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

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

12 ~~ARTICLE 7~~ **Reporter's Note:** Some Observers have noted that this
13 provision (which specifies which agencies may receive
14 information) is too restrictive for effective law enforcement.
15 The Drafting Committee should consider whether a more general
16 confidentiality provision is appropriate.

17 ARTICLE 6

18 **PERMISSIBLE INVESTMENTS**

19 ~~_____ SECTION 701.~~ **SECTION 601.** MAINTENANCE OF PERMISSIBLE
20 INVESTMENTS.
21

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

28 _____ (b) The [superintendent], with respect to any
29 licensees, may limit the extent to which a class of permissible
30 investments may be considered a permissible investment, except

1 for money and certificates of deposit. The [superintendent] by
2 rule may prescribe or by order allow other types of investments
3 ~~that~~which the [superintendent] determines to have a safety
4 substantially equivalent to other permissible investments.

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

8 **~~Reporter's Note~~**

9 ~~Money transmitters are required to maintain a certain level of investments that are equal to the~~
10 ~~value of their outstanding obligations as a means of protecting individual consumers. This is~~
11 ~~another safety and soundness requirement designed to safeguard funds received from~~
12 ~~consumers.~~Source: President's Commission Act Section 14 (with
13 modifications).

14 Reporter's Note: All references to net carrying value which were
15 included in former Section 701 have been omitted. The Drafting
16 Committee and Observers both felt that this term was ambiguous.

17
18 **(ALTERNATIVE 1)**

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

22 (1) cash, certificates of deposit, or other obligations of a
23 domestic financial institution or insured by the Federal Deposit
24 Insurance Corporation;

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

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

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

6 (5) a share in a money-market mutual fund; interest-bearing
7 bill, note, or bond; debentures; a share traded on a national
8 securities exchange or a national over-the-counter-market; or a
9 mutual fund primarily composed of one or more investments as
10 described in this section;

11 (6) a demand borrowing agreement made to a corporation or a
12 subsidiary of a corporation whose securities are listed on a
13 national securities exchange; and

14 (7) a receivable that is due a licensee from its authorized
15 delegate pursuant to a contract which is not past due or doubtful
16 of collection; and

17 (8) any other investment or security approved by the
18 [superintendent].

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

20 **Reporter's Note:** the Drafting Committee previously noted that the
21 investments listed under (f) and (g) may be too risky to be
22 included as permissible investments. More generally. Drafting
23 Committee members and Observers expressed concern about the broad
24 nature of permissible investments and the fact that there were no
25 specific percentage limitations on any one type of investment.
26 Industry Observers noted, however, that the definition as
27 provided is typical of what is currently permitted in many
28 states. A second alternative has been provided below.

29
30 (ALTERNATIVE 2)

31 ~~SECTION 702.~~ **SECTION 602. TYPES OF PERMISSIBLE**
32 **INVESTMENTS.**

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

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

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

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

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

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

24 ~~—— (6) a share or a certificate issued by an open-end management investment~~
25 ~~company that is registered with the Securities and Exchange Commission under the Investment~~

1 ~~Company Act of 1940 [15 U.S.C. Sections 80a-1 et. seq.], and the portfolio of which is restricted~~
2 ~~by the management company's investment policy to investments specified in paragraphs (1)~~
3 ~~through (4).~~

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

6 ~~—— (1) an interest-bearing bill, note, bond, or debenture of a person whose shares are~~
7 ~~traded on a national securities exchange or on a national over the counter market, if the~~
8 ~~aggregate investments under this paragraph do not exceed 20 percent of the total permissible~~
9 ~~investments of a licensee and a licensee does not at one time have investments under this~~
10 ~~paragraph in any one person aggregating more than 10 percent of the licensee's total permissible~~
11 ~~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 Securities and Exchange Commission under the Investment~~
15 ~~Company Act of 1940, and the portfolio of which is restricted by the management company's~~
16 ~~investment policy to shares of a person traded on a national securities exchange or a national~~
17 ~~over the counter market, if the aggregate investments under this paragraph does not exceed 20~~
18 ~~percent of the total permissible investments of a licensee and a licensee do not at one time have~~
19 ~~investments under this paragraph in any one person aggregating more than 10 percent of the~~
20 ~~licensee's total permissible 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~~

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

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

7 ~~_____ (c) The aggregate investments under subsection (b) may not exceed 50~~
8 ~~percent of the total permissible investments of a licensee calculated in accordance with Section~~
9 ~~701.(2) bankers' acceptances and bills of exchange that are~~
10 ~~eligible for purchase by member banks of the Federal Reserve~~
11 ~~System;~~

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

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

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

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

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

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

24 (3) a demand borrowing agreement made to a corporation
25 or a subsidiary of a corporation whose securities are traded on a
26 national securities exchange, if the aggregate of the amount of
27 principal and interest outstanding under demand borrowing

1 agreements under this paragraph does not exceed 20 percent of the
2 total permitted investments of a licensee and a licensee does not
3 at one time have principal and interest outstanding under demand
4 borrowing agreements under this paragraph with any one person
5 aggregating over 10 percent of the licensee's total permitted
6 investments; or

7 (4) receivables that are due to a licensee from its
8 authorized delegates pursuant to a contract which are not past
9 due or doubtful of collection if the aggregate amount of
10 investments in receivables under this paragraph does not exceed
11 20 percent of the total permitted investments of a licensee and a
12 licensee does not at one time have investments in receivables
13 under this paragraph with any one person aggregating over 10
14 percent of the licensee's total permitted investments; or

15 (5) any other investment the [superintendent]
16 determines to be permissible, to the extent specified by the
17 [superintendent].

18 (c) The aggregate investments under subsection (b) may not
19 exceed 50 percent of the total permissible investments of a
20 licensee calculated in accordance with Section 601.

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

24 **Reporter's Note**

25 ~~At the October 1998 drafting meeting, the Drafting Committee expressed some concern about~~
26 ~~the types of permissible investments that have been included in model legislation, as well as in~~
27 ~~existing state money transmission statutes. As stated in the Prefatory Note, money transmitters~~
28 ~~have to maintain investments that are equal to the aggregate face amount of all their outstanding~~
29 ~~funds transfers and payment instrument obligations (on a dollar for dollar basis).~~ **Note:** The
30 Drafting Committee felt that the provisions were more substantive
31 in nature as to what constituted a permissible investment and

1 therefore have been moved from the definitions to Article 6.

2
3 ~~observed that certain investments appeared more risky than others — especially in the absence~~
4 ~~of~~ At the October 1998 Drafting Committee meeting, Drafting
5 Committee Members expressed some concerns about former
6 Subsections 1-102(a)(26)(e) -- (g) which permitted investments --
7 without any limitations or caps on percentage of the licensee's
8 portfolio invested in any of these ~~items~~ items -- in any of the
9 following items:

10 ~~The items that the Committee identified as potentially problematic were:~~

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

22
23 The Drafting Committee ~~thought~~ felt as did some Observers that
24 these types of investments posed higher levels of risk to the
25 licensee and ultimately to the public than was appropriate for
26 ~~money services~~ money services businesses. Industry Observers noted,
27 however, that such investments were commonly included in state
28 ~~law~~ legislation. In fact, the MTRA outline lists such investments
29 as permissible, though it states that loans should not exceed ~~10~~
30 ~~percent~~ 10% of the net worth of a licensee; and the amount of such
31 ~~loans~~ laws as a total percentage of permissible investments may be
32 subject to legislation.

33
34 The current list of permissible investments is an attempt to
35 balance the concerns of regulators for safety and soundness and
36 of industry participants who have concerns about their ability to
37 properly conduct business. The categories of investments listed
38 in ~~Section 702(b)~~ current 602(b) (Alternative 2) permit the type of
39 investments that had previously raised concerns. The main
40 difference in ~~the~~ new Section ~~702(b) and current practice~~ 602(b) is that the
41 aggregate cap on such investments is ~~set~~ at 20 percent of the
42 licensee's portfolio. Additionally, the licensee may not invest
43 in more than 10 percent of any one person with respect to these
44 same investment categories. This balances the need to allow
45 licensees to have flexible and diverse options for investment;
46 but also limits the aggregate amount that a licensee can invest
47 in these riskier categories.

48 ~~Receivables, in particular, was one category that received considerable attention by members of~~
49 ~~the Committee. Industry Observers, however, explained that there was a practical reason for~~
50 ~~including receivables as a category of permissible investments. They noted that the practice of~~

1 ~~including receivables as permissible investments had become a necessity due to the use of~~
2 ~~automated money order dispensers. Typically, money orders are sold at sales outlets through~~
3 ~~automated dispensers. The automated dispenser immediately records the sale of the money order~~
4 ~~and notifies the money transmitter. This real-time "notification" immediately triggers the~~
5 ~~obligation of a money transmitter to retain permissible investments for the money order sold on a~~
6 ~~dollar for dollar basis. However, while the obligation to maintain investments is triggered at the~~
7 ~~time of sale, there is a lag of time until the sales outlet actually remits funds to the money~~
8 ~~transmitter. For the time period between~~

9 ~~sale and remittance of the funds that the sales outlet has received, the money transmitter~~
10 ~~needs to treat those "receivables" as part of its~~The Drafting Committee may wish to
11 consider the permissible investment portfolio. Previously, authorized delegates
12 had notified a money transmitter of the number of money orders sold at the same time that it
13 remitted a check for the fundsprovisions contained in states where money
14 services businesses are engaged in higher volumes of business
15 such as California, New York, Florida, and ~~received.~~

16 ~~ARTICLE 8~~Texas as a basis for comparison.

17
18 ARTICLE 7

19 **ENFORCEMENT**

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

22 ~~SECTION 801.~~(a) After notice and hearing, the [superintendent] may
23 issue an order to cease and desist, suspend, or revoke a license,
24 or order a licensee to revoke the designation of an authorized
25 delegate if:

26 ~~SECTION 801.~~(1) the licensee ~~does not~~fails to comply with
27 this [Act] or a rule adopted or an order issued under this [Act];

28 ~~SECTION 801.~~(2) the licensee or authorized delegate of
29 the licensee engages in fraud, misrepresentation, deceit, or
30 gross negligence;

31 ~~SECTION 801.~~(3) an authorized delegate violates the Bank
32 Secrecy Act, a state or federal anti-money-laundering statute, or
33 a rule adopted or an order issued under this [Act] as a result of

1 the licensee's ~~willful~~negligent failure to supervise the authorized
2 delegate or as a result of the willful misconduct or willful
3 blindness of the licensee;

4 ~~_____~~ (4) the licensee is insolvent or suspends
5 payment of its obligations, ~~or~~ makes an assignment for the benefit
6 of its ~~creditors~~creditors, or admits in writing its inability to
7 pay its debts as they become due;

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

12 ~~_____~~ (6) the competence, experience, character, or
13 general fitness of the licensee or authorized delegate or a
14 controlling person of the licensee or authorized delegate
15 indicates that it is not in the public interest to permit the
16 person to engage in the ~~money services~~money services business; ~~or~~

17 (7) the licensee does not make a report required by
18 this [Act]: or

19 ~~_____~~ ~~(7)~~(8) the licensee engages in ~~any~~ unsafe or
20 unsound practice.

21 ~~_____~~ ~~(b) In determining~~ (b) In making the determination of
22 whether a person is engaging in an unsafe or unsound practice,
23 the [superintendent] may consider the size and condition of the
24 money ~~transmitter~~services business, the magnitude of the loss, the
25 gravity of the violation ~~of this [Act]~~, and the previous conduct of
26 the person involved.

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

3 **Reporter's Note**

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

20 activity. Some states provide more detailed standards for when a
21 cease and desist order becomes effective. The Texas Currency
22 Exchange Transportation and Transmission provisions of the Texas
23 Finance Code provide that a cease and desist order takes effect
24 on issuance if the Banking Commissioner finds a threat of
25 immediate and irreparable harm to the license holder or the
26 public. If no immediate or irreparable harm is found, the order
27 is not effective before 10 days after the order is received. The
28 order must be served on the licensee, the licensee's board of
29 directors and any offending principal. Texas Finance Code Section
30 153-407.

31
32 Other state laws enumerate separate and specific grounds for the
33 denial of a license or for revocation, suspension or restriction
34 of a previously granted license. Florida, for example, lists a
35 material misstatement of fact in an initial or renewal
36 application, the loss of license in another jurisdiction (due to
37 fraud or dishonest ~~dealing) and~~dealing), criminal convictions
38 involving fraud or dishonest dealing as grounds for license
39 denial, suspension or non-renewal. See Florida Money

40 Transmitters' Code Section ~~560.114(2)(a)-(e).~~560.114(2)(a) - (c).

41 Selected Issue: Should the cease and desist provisions include
42 specific reference to a licensee's books and records and also
43 violations of the recordkeeping provisions of the Proposed Act?
44 Reporter's Note: The Drafting Committee received comments from
45 Observers who noted that certain provisions of the October 1998
46 draft should not have been omitted from the February 1998 draft.
47 These provisions (former Sections 1001(a)(3) and (5) in the
48 October 1998 draft) permitted the superintendent to issue a cease
49 and desist order against the licensee in the event that the

1 licensee failed to "maintain, preserve and keep available for
2 examination all books, accounts or other documents required by
3 the [Act] or any rules or orders adopted pursuant to the [Act]"
4 or if the "licensee has failed to comply with its recordkeeping
5 and reporting requirements under the Act." The Drafting Committee
6 previously felt that these provisions were included in current
7 subparagraph (a) (1) which allows the Superintendent to issue a
8 cease and desist order for any violation of the Act. Failing to
9 maintain records or violating recordkeeping requirements would
10 appear to constitute a violation of the Act. The Drafting
11 Committee may want to consider, however, whether these provisions
12 should be specifically included in the next draft.

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

20
21 ~~SECTION 802.~~ **SECTION 702. AUTHORIZED DELEGATES; ORDERS**
22 **TO CEASE AND DESIST.**

23 ~~_____~~ (a) After notice and hearing, the [superintendent] may
24 issue an order to cease and desist against a licensee or its
25 authorized delegate, including an order requiring the licensee to
26 cease engaging in the business through an authorized delegate and
27 to take appropriate affirmative action, if the [superintendent]
28 finds that:

29 ~~_____~~ (1) the authorized delegate is violating this
30 [Act] or a rule adopted or an order issued under this [Act];

31 ~~_____~~ (2) the authorized delegate does not
32 cooperate with an examination or investigation by the
33 [superintendent];

34 ~~_____~~ (3) the competence, experience, character, or
35 general fitness of the authorized delegate or a controlling
36 person of the authorized delegate indicates that it is not in the
37 public interest to permit the person to engage in the ~~money-~~

1 ~~services~~money services business;

2 _____ (4) the financial condition of the authorized
3 delegate jeopardizes the interests of the public in the conduct
4 of the ~~money services business~~money services business;

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

7 _____ (6) the authorized delegate commits a felony.

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

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

14 ~~**Reporter's Note**~~

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

21 ~~(SUBSECTION (b) ALTERNATIVE 1)~~

22 ~~(b) A licensee is responsible for conduct engaged in by an~~
23 ~~authorized delegate under the authority granted to it in the~~
24 ~~contract between the licensee and the authorized delegate if the~~
25 ~~licensee knew or should have known that the conduct violates this~~
26 ~~[Act] or a rule adopted or an order issued under this [Act] and~~
27 ~~the licensee willfully allowed the conduct to continue.~~

28 **Source:** Model Act Regulating Money Transmitters Section 10.

29 **Reporter's Note:** Some criticism has been made about the
30 limitations included in this provision. First, the licensee's
31 responsibility for conduct of the authorized delegate is limited

1 to actions relating to the contract between the license and its
2 authorized delegates. Second, the licensee is only responsible
3 for wrongful conduct of the delegate which it had knowledge of.
4 Subparagraph (b) Alternative 2 is a proposed alternative which
5 would eliminate these limitations. The issue is to what extent
6 the Licensee should have incentives to monitor its delegates and
7 to promote compliance with the Proposed Act.

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

15
16 **(SUBSECTION (b) ALTERNATIVE 2)**

17 (b) If an authorized delegate violates this [Act] or a rule
18 adopted or an order issued under this [Act] as a result of the
19 licensee's negligent failure to supervise or as result of the
20 willful misconduct or willful blindness of the licensee, the
21 licensee is responsible for the violation.

22 **Source:** President's Commission Model Act Section 11(f); see also
23 A.R.S. Section 6-1210(5).

24 **Reporter's Note:** 702(b) Alternative 1 places responsibility on
25 the licensee for the conduct of the authorized delegate to the
26 extent that the licensee knew of the delegate's misconduct or
27 allowed it to continue. The Drafting Committee needs to consider
28 whether scope of licensee liability and/or responsibility for
29 authorized delegate conduct needs to be extended to willful
30 blindness or recklessness. Additionally, the Drafting Committee
31 may consider further defining how a licensee should supervise
32 authorized delegates.

33
34 702(b) alternative 2 makes a licensee responsible for the actions
35 of the authorized delegate that are the result of the licensee's
36 negligent failure to supervise and/or willful misconduct. One
37 Observer has made the following suggestion: "The President's
38 Commission Model Act and the Arizona statute makes the licensee
39 responsible for the conduct of its authorized delegates if the
40 conduct occurred as a result of a course of negligent failure to
41 supervise or as a result of the willful misconduct of the
42 licensee."

43
44 (c) In making the determination of whether a person is
45 engaging in an unsafe or unsound practice, the [superintendent]
46 may consider the size and condition of the money services

business, the magnitude of the loss, the gravity of the violation, and the previous conduct of the person involved.

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

SECTION ~~803-703~~. TEMPORARY ORDERS TO CEASE AND DESIST.

~~—(a) If (a) Whenever~~ the [superintendent] determines that a violation of this [Act] ~~or of a rule adopted or an order issued under this [Act]~~ by a licensee or authorized delegate is likely to: cause immediate and irreparable harm to the licensee, its customers, or the ~~public as a result of the violation, or public;~~ cause insolvency or significant dissipation of assets of the licensee; weaken the condition of the licensee; or otherwise prejudice the interests of consumers, the [superintendent] may issue a temporary order requiring the licensee or authorized delegate to cease and desist from the violation. The order ~~becomes~~shall become effective upon service upon the licensee or authorized delegate.

~~—(b) A (b) The~~ temporary order ~~remains~~shall remain effective and enforceable pending the completion of an administrative proceeding pursuant to Section ~~801 or 802~~701 or Section 702.

~~—(c)~~ Within 10 days after a licensee or an authorized delegate is served with a temporary order to cease and desist, the licensee or authorized delegate may ~~petition~~apply to the [appropriate court], for an injunction setting aside, limiting,

1 or suspending the enforcement, operation, or effectiveness of the
2 temporary order pending the completion of an administrative
3 proceeding pursuant to Section ~~801 or 802~~ 701 or Section 702.

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

~~Reporter's Note~~

7 ~~There was some concern expressed~~ **Reporter's Note:** Some Observers had
8 expressed concern at the October 1998 meeting, that the Proposed
9 Act did not provide the superintendent with sufficient authority
10 to deal with exigent situations through the use of expedited
11 procedures. ~~Section 803 provides~~ New Section 703 attempts to provide
12 the superintendent with limited authority to issue temporary
13 orders to cease and desist without ~~prior~~ first going through notice
14 and hearing procedures. ~~The superintendent, however, must have a reasonable belief~~
15 ~~that the licensee or its authorized delegate is engaging in an unsafe or unsound activity or is~~
16 ~~violating a provision of the Act, before invoking temporary powers.~~

17 Drafting Committee members should consider whether such a
18 provision should be included separately or as part of the cease
19 and desist provisions which are found in Sections 701 and 702.
20 **Selected Issue:** Should there be a similar provision which allows
21 the superintendent to suspend a license prior to a hearing if he
22 or she determines that such an action is in the public interest?
23

24 ~~SECTION 804.~~ SECTION 704. **CONSENT ORDERS.** The

25 [superintendent] may enter into a consent order at any time with
26 a person to resolve a matter arising under this [Act]. A consent
27 order must be signed by the person that it is issued to or by the
28 person's authorized representative, and must indicate agreement
29 with the terms contained in the order. A consent order need not
30 constitute an admission by a person that this [Act] or a rule
31 adopted or an order issued under this [Act] has been violated.

32 **Source:** Model Act Regulating Money Transmitters Section 24.
33

~~Reporter's Note~~

34 ~~Section 804 gives the superintendent the ability to enter into a negotiated settlement with a~~
35 ~~money services business with respect to alleged violations of the Act and potential disciplinary~~
36 ~~proceedings. The use of consent orders provides the superintendent with a flexible means of~~
37 ~~achieving enforcement goals while minimizing the administrative and fiscal burden of lengthy~~

1 ~~administrative proceedings and hearings.~~

2 ~~SECTION 805.~~ SECTION 705. CIVIL PENALTIES.

3 ~~SECTION 805.~~ (a) A person that ~~intentionally~~ violates ~~this [Act] or a rule adopted or~~
4 ~~an order issued under~~ this [Act] may be assessed a civil penalty by
5 [the superintendent] in an amount equal to [\$1,000] per day plus
6 the State's costs and expenses for the investigation and
7 prosecution of the matter, including reasonable attorney's fees.

8 ~~SECTION 805.~~ (b) The [superintendent] may maintain an action in the [name of appropriate court or
9 adjudicatory body] in the [county] in which a violation of this [Act] or of a rule adopted or an
10 order issued under this [Act] is alleged to have occurred or in any other [county] in which venue
11 is permitted under [reference to this State's venue statutes and rules] in the same manner as in
12 other civil actions.

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

15 **Reporter's** ~~Note~~

16 ~~In addition to the ability to take disciplinary action against a money services business or its~~
17 ~~delegates for violations of the Act, civil penalties provide another enforcement mechanisms~~
18 ~~aimed at deterring money laundering. As discussed at the first meeting of the Drafting~~
19 ~~Committee, civil penalties are preferred enforcement mechanisms due to the commercial nature~~
20 ~~of the Act.~~ Note: The current Section ~~805~~804 was the second of two
21 alternative subparagraphs included in the February 1998 draft.
22 The first alternative capped the maximum civil penalty at \$100
23 per day per violation. The same provision also allowed licensees
24 an opportunity to cure their violations. The Drafting Committee
25 ~~decided~~felt that such a "cure" provision eliminated much of the
26 effectiveness of the civil money penalty provision. The second
27 alternative, which was retained in ~~the Act,~~this draft, has been
28 modified. Previously, ~~it included~~there was a reference to a fine
29 equaling an amount equal to the gross business engaged in
30 connection with the violation. The Drafting Committee and
31 Observers alike considered this too imprecise a formula. Instead,
32 a civil money penalty of \$1,000 per day ~~is included.~~ Additionally, the
33 ~~Committee eliminated former subsection 805 (b), which has been suggested.~~
34 Additionally, former Section 804 (b) has been eliminated. This
35 provision included a separate fine of \$1,000 per day for engaging
36 in ~~a money services~~money services business without a license. It was

1 decided that this ~~was, by definition, a~~ per se violation of the
2 Proposed Act and therefore did not need to be the subject of a
3 separate provision new act.

4
5 (b) The [superintendent] may bring and maintain an action in
6 the [name of appropriate court or adjudicatory body] in the
7 [county] in which a violation of this [Act] or of a rule adopted
8 or an order issued under this [Act] is alleged to have occurred
9 or in any other [county] in which venue is permitted under
10 [reference to this State's venue statutes and rules] in the same
11 manner as the filing of other civil actions.

12 **Source:** President's Commission Act Section 23.

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

16 **Selected Issue:** Should subsection (b) eliminated and subsection
17 (a) amended to provide that a civil penalty may be assessed after
18 the licensee if provided with notice and an opportunity for a
19 hearing?

20
21 ~~SECTION 806.~~ SECTION 706. CRIMINAL PENALTIES.

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

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

1 — (c) A person that ~~intentionally~~knowingly and willfully
2 engages in any conduct for which a license is required under this
3 [Act] without being licensed under this [Act] is guilty of a
4 [reference to state classification] felony.

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

8 **Reporter's Note**

9 **Note:** General criminal penalties for all violations are typical
10 of regulatory codes. False statements and other
11 misrepresentations are at the core of the regulatory process and
12 therefore are listed ~~separately. Although the Drafting Committee expressed some~~
13 ~~concern about the inclusion of criminal penalties in a civil licensing statute, separately.~~

14 ~~Observers who represented law enforcement emphasized the need for criminal penalties~~
15 ~~in connection with serious violations of the Act. The Committee supports the inclusion of those~~
16 ~~provisions in Section 806 because they relate to very serious, specific and tangible violations of~~
17 ~~the Act.~~

18 **ARTICLE 9**

19 **SECTION 707. UNAUTHORIZED ACTIVITIES.**

20 (a) A person, other than a licensee or an authorized
21 delegate, may not engage in a money services business unless the
22 person is excluded under Section 104.

23 (b) A person may not engage in conduct as an authorized
24 delegate of a person required to obtain a license under this
25 [Act] but who is not so licensed. The person that engages in that
26 conduct becomes the principal and is no longer an authorized
27 delegate. The person is also liable to the holder or remitter as
28 a principal of a money services business.

29 (c) The [superintendent] may issue a complaint and issue an
30 order to cease and desist against a person that engages in the
31 business without a license. The [superintendent] may also impose
32 a civil monetary penalty under Section 705.

1 Source: Florida Money Transmitters' Code Section 560.125 (with
2 modifications).

3 Reporter's Note: The MTRA has observed that State regulators need
4 authority to deal with money services businesses that operate
5 without a license. The Style Committee has pointed out that
6 Section 707 may be redundant given the prohibitions against
7 unlicensed activity in the Proposed Act.

8 ARTICLE 8

9 ADMINISTRATIVE PROCEDURES

10
11 ~~SECTION 901.~~ SECTION 801. ADMINISTRATIVE PROCEDURES. All
12 administrative proceedings under this [Act] must be conducted in
13 accordance with ~~the state~~ the [state administrative procedure act].

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

16 Reporter's Note

17 Note: The Drafting Committee noted that the Act should generally
18 conform to the provisions of the Model State Administrative
19 Procedure Act. MTRA members also expressed ~~their position that the Act should~~
20 ~~conform to state~~ concern that the Act conforms to State administrative
21 procedure laws.

22 ~~SECTION 902.~~ SECTION 802. HEARINGS.

23
24 ~~(a) Except as otherwise provided in Sections 204(c), 303(c), 403(c), and 803,~~
25 ~~the~~ (a) The [superintendent] may not suspend or revoke a license,
26 issue an order to cease and desist, revoke the designation of an
27 authorized delegate, or assess a civil penalty without ~~notice~~
28 ~~and~~ holding a hearing. The [superintendent] shall also hold a
29 hearing when requested to do so by an applicant whose application
30 ~~for a license~~ is denied.

31 ~~(b) The [superintendent], in a record,~~ (b) The [superintendent] shall
32 give a licensee or an applicant at least [10] ~~days~~ days written
33 notice of the time and place of a hearing by registered or

1 certified mail, addressed to the licensee or applicant at its ~~last~~
2 ~~known~~last-known address.

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

5 **Reporter's Note**

6 **Note:** Except for the issuance of temporary orders pursuant to
7 Section ~~803,703~~, the superintendent is required to provide notice
8 and have a hearing before taking any disciplinary or enforcement
9 actions against a licensee or its authorized delegates. The
10 President's Commission Act only refers to suspension, revocation
11 and denial of licenses. Section 802 has been ~~also been~~ extended
12 further to include cease and desist authority and also the
13 ability to assess civil penalties. Part of the President's
14 Commission Act text has been omitted:

15 **ARTICLE 10**Any order of the [superintendent] suspending,
16 revoking or denying a license shall state the grounds it is
17 based on and shall not be effective until ten (10) days
18 after written notice of the order has been sent by
19 registered mail or certified mail to the licensee or
20 applicant at its last-known address. Any hearing required by
21 this Section shall be conducted on the record. Witnesses
22 shall be sworn and evidence presented to the
23 [superintendent] shall be appropriately identified and
24 preserved. The [superintendent] is hereby granted subpoena
25 powers to compel the production of physical items and the
26 attendance of witnesses. Any notice required under this
27 Section shall be deemed served on the third business day
28 after the [superintendent] mails it. A licensee may seek
29 court review of the [superintendent's] findings and order.

30 **Reporter's Note:** The Former Section 1001 on Consumer Disclosure
31 has been eliminated. This provision previously required that
32 "Every licensee and authorized delegate shall provide each
33 consumer of a money services business transaction a toll-free
34 telephone number for the purpose of consumer inquiries. In lieu
35 of a toll free number, the licensee or authorized delegate may
36 provide the address and telephone number of the
37 [superintendent]."

38
39 The Drafting Committee decided to omit this provision as it
40 placed a heavy regulatory burden on the superintendent or
41 regulator with respect to referrals from licensees. Additionally,
42 the Drafting Committee felt that this provision might overlap
43 with existing consumer protection legislation provisions. The
44 Proposed Act is not meant to repeal any existing consumer
45 legislation.
46

1 ARTICLE 9

2 ~~MISCELLANEOUS PROVISIONS~~ MISCELLANEOUS PROVISIONS

3 ~~SECTION 1001.~~ SECTION 901. APPOINTMENT OF
4 [SUPERINTENDENT] AS AGENT FOR SERVICE OF PROCESS.

5 (a) A licensee or a person that engages in the business
6 without being licensed ~~under this [Act] is deemed to have:~~ is deemed to have
7 done both of the following:

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

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

14 (b) Within [three] business days after service of
15 process upon the [superintendent], the [superintendent] shall
16 send by certified mail copies of all lawful process accepted by
17 the [superintendent] as a person's agent to the person at its ~~last~~
18 ~~known~~ last-known address. Service of process is complete [three]
19 business days after the [superintendent] deposits the copies of
20 the process in the United States mail. 1

21 Source: Model Act Regulating Money Transmitters Section 28.

22 Reporter's Note: This Section is bracketed because some states do
23 not allow the secretary of state to accept service of process.

24 ~~SECTION 1002.~~ SECTION 902. UNIFORMITY OF APPLICATION AND
25 CONSTRUCTION. In applying and construing this ~~Uniform~~ [Act],
26 consideration must be given to the need to promote uniformity of
27 the law with respect to its subject matter among States that
28

1 enact it.

2 Source: USL Drafting Manual.

3

4 ~~SECTION 1003. SEVERABILITY CLAUSE. SECTION 903.~~

5 SEVERABILITY. If any provision of this [Act] or its application

6 to any person or circumstance is held invalid, the invalidity

7 does not affect other provisions or applications of this [Act]

8 which can be given effect without the invalid provision or

9 application, and to this end the provisions of this [Act] are

10 severable.

11 ~~SECTION 1004. EFFECTIVE DATE. This [Act] takes effect on~~Source: USL
12 Drafting Manual.

13

14 SECTION 904. EFFECTIVE DATE.

15 Source:

16

17 ~~SECTION 1005. SECTION 905.~~ SAVINGS AND TRANSITIONAL

18 PROVISIONS.

19 Source:

20