

DRAFT

FOR DISCUSSION ONLY

# **UNIFORM MONEY SERVICES BUSINESS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**MARCH 1999**

# **UNIFORM MONEY SERVICES BUSINESS ACT**

With Reporter's Notes

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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\*Formerly the Nondepository Providers of Financial Services Act. The Drafting Committee changed the name at the October 1998 meeting. The Executive Committee approved the name change and designated the act as uniform at the January 1999 Executive Committee Meeting.

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

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

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

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

1

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

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

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

14 **Source:** New

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

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

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

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

32 "Check casher" means a person who, for compensation or gain, or in the  
33 expectation of compensation or gain, either directly or indirectly, sells  
34 currency in exchange for payment instruments received, except travelers  
35 checks and foreign-drawn payment instruments.  
36

37 Suggested Amendments to Florida Money Transmitters' Code Section 560.120.

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

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

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

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

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

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

#### (ALTERNATIVE 1)

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

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

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

More generally, the Drafting Committee felt that Subsection (5) was a formalistic definition of control and did not take into account the ability of persons to influence management in other



ways such as the ability to elect directors or otherwise exert control. The circumstances under which shares will be aggregated is not fully defined. Furthermore, aggregation is only triggered when the interests of one person are controlled by the other person. Consequently, two alternatives have been offered which may provide for a more flexible approach to the notion of control.

**(ALTERNATIVE 2)**

(5) "Control" means:

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

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

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

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

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

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

**Selected Issues:**

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

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

**Source:** Arizona Money Transmitter Act Section 6-1201; Model Act Regulating Money

Transmitters Section 3 (modified to include the word "indirectly").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (18) "Money transmitter" means a person that engages, for compensation, in the  
27 transmission of money by any means, including transmissions within this country or to or from  
28 locations outside this country by payment instrument, wire, telecopier, facsimile, electronic

transfer, or courier. The term does not include a clearinghouse or other association of banks that effects transfers of funds between or among banks through check clearing, wire transfer, automated clearinghouse, or similar services.

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

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

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

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

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

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

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

1 Based on recommendations from Observers, the current draft of the Proposed Act treats stored  
2 value instruments as payment instruments. Therefore, a stored value provider would also be a  
3 payment instrument seller (as opposed to a money transmitter). The current draft contains an  
4 additional definition of a stored value provider. This may not be necessary and it will be useful  
5 for Observers to provide input into whether the Connecticut approach seems the most appropriate  
6 and also whether a separate definition is needed for stored value providers as distinct from  
7 payment instrument sellers.

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

12 (19) "Outstanding", in regard to a payment instrument, means a payment  
13 instrument issued by a licensee, which has been sold directly by the licensee, or a payment  
14 instrument issued by a licensee which has been sold by an authorized delegate of the licensee,  
15 which has been reported to the licensee as having been sold and which has not yet been paid by  
16 or for the licensee.

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

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

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

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

Connecticut has also amended its definition of "instrument" to include an electronic payment instrument. Id.

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

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

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

**Reporter's Note:** The term used by FinCEN is check seller rather than payment instrument seller.

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

**Source:** USL Drafting Manual.

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

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

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

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

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

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

6 **Reporter's Note:** Many states have incorporated some notion of a "responsible" individual or  
7 controlling person, or money transmitter affiliated party to indicate persons who have oversight  
8 or managerial responsibility with respect to money services businesses. A responsible individual  
9 is someone who has an active role in management and operations as contrasted with a controlling  
10 person or key shareholder that may or may not have such a role.

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

13 **Source:** USL Drafting Manual.

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

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

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

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

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



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

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

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

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

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

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

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

9 **Source:** New.

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

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

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

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

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

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

of purchase and a countersignature of the purchaser to be completed at the time of negotiation.

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

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

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

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

**SECTION 103. SUPERVISORY POWERS OF [SUPERINTENDENT].** Consistent with this [Act] the [superintendent] has supervision over all money services businesses and their authorized delegates.

**Source:** Florida Money Transmitters' 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 political subdivision thereof;
- (4) a bank, bank holding company, thrift company, credit union, building and loan association, savings and loan association, savings bank, or mutual bank, offices of an

1 international banking corporation, branches of foreign banks, a corporation organized pursuant to  
2 the Bank Service Act, or an Edge Act Agreement Corporation organized under the laws of a  
3 State or the United States, if the person does not issue, sell, or provide payment instruments  
4 through an authorized delegate that is not such a person;

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

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

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

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

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

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

(11) [reserved for future use].

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

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

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

#### **SECTION 105. LICENSE REQUIRED.**

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

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

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

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

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

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

(e) A license is not transferable or assignable except as otherwise provided in this [Act].

**Source:** Model Act Regulating Money Transmitters Section 2 combined with President's Commission Act Section 5. The restrictions on transfer or assignment of a license come from

1 California Financial Code Section 12219 which prohibits the transfer of check selling licenses.  
2 **Reporter's Note:** The act will need to distinguish between authorized delegates who provide  
3 services solely pursuant to contracts with money services businesses and those entities who serve  
4 as delegates but also operate as principals with respect to some aspect of money services. For  
5 example, a check casher might operate as a principal with respect to check cashing services and  
6 also operate as an authorized delegate for a money transmitter.

## 7 **ARTICLE 2**

### 8 **LICENSING OF MONEY TRANSMITTERS AND PAYMENT INSTRUMENT**

#### 9 **SELLERS**

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

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

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

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

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

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

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

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

26 (5) a sample form of contact for authorized delegates, if applicable, and a sample

1 form of payment instrument, if applicable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Source:** Arizona Money Transmitter Law Section 6-1203; President's Commission Act Section  
18 7; Florida Money Transmitters' Code Section 560.205.

19 **Reporter's Notes: Selected Issue:** At the February 1998 Drafting Committee meeting, the  
20 Drafting Committee decided to create separate licensing, net worth and bonding requirements for  
21 both categories of money services businesses. It was felt that check cashers and currency  
22 exchangers posed less safety and soundness concerns because customers were provided with  
23 cash immediately. Additionally, Observers stated that check cashers are typically subject to  
24 minimal or no net worth requirements.

25 As set forth in Articles 2 and 3, separate licensing, recordkeeping and net worth requirements  
26 have been established for money transmitters and for check cashers/foreign currency exchanges.  
27 The superintendent's supervisory and enforcement powers, however, are the same for all money  
28 services businesses. This is the approach taken by several states including Florida and Georgia.  
29 This is to promote one of the main goals of the Proposed Act which is to create an appropriate



1 regulatory framework to deter and eliminate the use of money services businesses as potential  
2 vehicles for money laundering. The licensing application is the first point at which the state may  
3 protect the public from permitting entry by those persons who would bring discredit on the  
4 industry and the first source of information for investigators and regulators in the event that there  
5 is future misconduct by the licensee.

6 At the October 1998 Drafting Committee meeting, it was decided that stored value providers  
7 should be required to obtain licenses under the Proposed Act. At present, stored value  
8 instruments are encompassed within the definition of payment instruments. In 1998, Connecticut  
9 enacted the Act Concerning Electronic Payment Instruments and Currency and Foreign  
10 Transactions Reporting. This act amended existing money transmission legislation so that stored  
11 value products (referred to as "electronic payment instruments") are treated as payment  
12 instruments. Furthermore, issuers of such payment instruments are subject to licensing and  
13 regulation in Connecticut. See CT. Legis. 98-192 cited in 1998 Conn. Legis. Serv. P.A. 98-192  
14 (S.S.B. 230) (West). West Virginia also adopted new legislation designed to amend its current  
15 money transmission legislation. West Virginia's legislation includes stored value within the  
16 definition of money transmission. 1998 West Virginia Laws Ch. 73 (H.B. 4591). As in  
17 Connecticut, this triggers licensing and other requirements for stored value providers. Texas has  
18 also interpreted its sale of checks statute to apply to smart cards issued by non-banks for use in  
19 open networks. See Remarks of Catherine A. Ghigieri, Texas Department of Banking to the  
20 PULSE EFT Assoc. Member Conference (October 11, 1996) located at [www.banking.state.tx.us/exec/speech10a](http://www.banking.state.tx.us/exec/speech10a).

## 22 **SECTION 202. SECURITY.**

### 23 **(SUBSECTIONS (a) AND (b) ALTERNATIVE 1)**

24 (a) An application for a license, under this article, must be accompanied by a surety bond,  
25 irrevocable letter of credit, or other similar security acceptable to the [superintendent] in the  
26 amount of [\$50,000].

27 (b) If an applicant proposes to engage in the business at more than one location through  
28 authorized delegates or otherwise, the amount of the security is increased by [\$10,000] per  
29 location, not to exceed [\$250,000]. The security must be in a form satisfactory to the  
30 [superintendent] and shall run to the State for the benefit of any claimant against the licensee to  
31 secure the faithful performance of the obligations of the licensee with respect to the receipt,  
32 handling, transmission, and payment of money in connection with the sale, issuance, and  
33 provision of payment instruments and the transmission of money.

1 (SUBSECTIONS (a) and (b) ALTERNATIVE 2)

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

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

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

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

22 (c) The aggregate liability on a surety bond may not exceed the principal sum of the  
23 bond. A claimant against a licensee may commence and maintain an action directly on the bond  
24 or the [superintendent] may commence and maintain an action on behalf of the claimant. The  
25 bond must be payable to a person injured by the wrongful act, omission, default, fraud, or  
26 misrepresentation of a licensee or an authorized delegate or employee of the licensee in the  
27 conduct of its business as a licensee or to the State for the benefit of the [superintendent] and of

1 the person injured. Only one bond is required of a licensee irrespective of the number of officers,  
2 directors, locations, employees, or authorized delegates of the licensee.

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

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

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

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

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

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

1 court of competent jurisdiction.

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

3 **Reporter's Note:** Bonding or net worth requirements are safety and soundness measures  
4 designed to protect the public but also to deter companies that have questionable solvency or  
5 business practices from entering the market. The bond requirement serves a barrier to entry for  
6 unstable companies. Alternatives, however, are provided to the bond requirement in the form of  
7 cash or cash alternatives. Licensees may also be permitted to deposit specified liquid assets in the  
8 amount of the bond. The Drafting Committee will need to strike a balance between the goals of  
9 safety and soundness and also providing open access to businesses who wish to enter the money  
10 services market.

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

14 **SECTION 203. ISSUANCE OF LICENSE.**

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

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

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

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

27 (b) The [superintendent] shall approve or deny an application for an original license  
28 within [120] days after an application is filed and is complete. The [superintendent] may extend  
29 the period for good cause. The [superintendent] shall notify the applicant of the date on which

1 the application is determined to be complete. If the application is not approved or denied within  
2 the period allowed for approval, the application is deemed approved and the [superintendent]  
3 shall issue the license effective as of the first business day after expiration of the period.

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

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

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

#### 16 **SECTION 204. RENEWAL OF LICENSE.**

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

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

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

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

consolidated audited annual financial statement of the parent corporation or the licensee's annual audited financial statement;

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

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

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

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

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

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

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

**Reporter's Note:** The alternative to a provision which outlines the contents of an annual renewal report is for the regulator to prescribe the contents of a renewal application by regulation. The Model Money Transmitters Licensing and Regulation Act contains a provision which takes this

1 approach. The current renewal provisions in subparagraph c have been modified. Both the  
2 Drafting Committee and Observers noted that it was too cumbersome to have a hearing provision  
3 for failure to renew a license. The Drafting Committee decided that a preferable alternative was  
4 for the license to expire if not renewed in a timely fashion. The licensee, however, shall have 30  
5 days to cure its failure to renew its license. Additionally, some Observers noted that Section  
6 306(2) (Alternative 2) which was contained in the February 1998 draft was a useful provision.  
7 This Section included a penalty of \$100 per day for late filing of a renewal application. Current  
8 Section 203 has been modified to include such a penalty.

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

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

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

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

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

20 **Reporter's Note:** An alternative to a general net worth requirement is to provide varying net  
21 worth requirements for different types of money services businesses. For example, Section 36a-  
22 604 of the Connecticut Money Order and Travelers Check Licensees Act requires that check  
23 sellers and money transmitters requires that each licensee that issues money orders must have a  
24 net worth of at least \$100,000. Issuers of travelers checks must have a net worth of at least \$1  
25 million.

## 26 **ARTICLE 3**

### 27 **LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS**

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

34 The Drafting Committee should consider whether the current licensing regime set forth in Article

1 3 will create any material differences for check cashers who are authorized delegates as opposed  
2 to check cashers who are not authorized delegates (and thus required to obtain a license) with  
3 respect to the level of recordkeeping and reporting required of both entities.

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

### 9 **SECTION 301. APPLICATION FOR LICENSE.**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(1) the applicant has complied with Section 301;

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

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

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

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

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

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

15 **Reporter's Note:** At the February 1998 Drafting Committee meeting, the Drafting Committee  
16 inquired as to whether states had mandatory time frames in which the regulator must respond to  
17 license applications. The MTRA representative supplied the Drafting Committee with sample  
18 statutory provisions that included mandatory time frames for response to a license application. In  
19 Tennessee, the time period is 180 days rather than 120. The MTRA Model Legislation Outline  
20 recommends an 120-day time period. The extension for "good cause" comes from the Maine Act  
21 to Regulate Money Transmitters and Amend Consumer Credit Laws, 32 M.R.S.A. Section  
22 6109(2).

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

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

27 (b) The [superintendent], by rule, shall establish an annual fee for renewal of a license

1 under this article

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

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

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

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

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

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

**SECTION 304. APPLICATION AND LICENSE FEE.** A non-refundable application fee of [\$1,000] and a license fee of [\$3,000] must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

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

**Reporter's 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 305. NET WORTH.** A licensee under this article shall maintain a net worth in liquid assets of at least [\$10,000] for each location at which the licensee or an authorized delegate of the licensee engages in check cashing or currency exchange and at least [\$2,500] for each mobile location or limited facility.

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

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

## **ARTICLE 4**

### **AUTHORIZED DELEGATES**

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

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

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

(c) Upon the suspension or revocation of a license or the failure of a licensee to renew its

license, the [superintendent] shall notify all authorized delegates of the licensee whose names are on record with the [superintendent] of the [superintendent's] action. On receipt of the notice, an authorized delegate shall immediately cease to engage in the business as a delegate of the licensee.

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

**Reporter's Note:** Section 401 (formerly Section 501 in the February 1998 draft) contains substantial revisions. The following provisions were omitted:

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

#### **SECTION 402. SCOPE OF AUTHORIZED DELEGATE'S ACTIVITY.** An

authorized delegate may not knowingly engage in activity which is outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except as provided in Section 105(d). An authorized delegate of a licensee holds in trust for the benefit of the licensee all moneys net of fees received from the sale, delivery, or provision of the licensee's payment instruments or money received for transmission.

#### **SECTION 403. UNAUTHORIZED ACTIVITIES.** A person may not engage in

conduct as an authorized delegate of a person that is not licensed under this [Act]. A person that engages in that conduct is engaging in the business to the same extent as if the person were the principal.

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

**Reporter's 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.

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## SECTION 501. AUTHORITY TO CONDUCT EXAMINATIONS.

(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.

**Reporter's Note:** The previous subsection (b) has been merged into subsection (a) with respect to the examination of authorized delegates. In the February 1998 draft an additional modification has been made. Previously, 801(a) stated that the superintendent had to have a reason to believe that the licensee or authorized delegate was engaging in an unsafe or unsound practice. Some Observers have noted that this is an ambiguous term that may hinder the superintendent's ability to examine licensees and delegates in a timely fashion (i.e., because licensee will be able to challenge the examination). Some Observers have noted that superintendents have not abused this authority where it has been given to them by statute. Furthermore, some regulators have observed that resource constraints provide a natural check on abuse of examination authority. As with several other provisions in this Proposed Act, the Drafting Committee and Observers need to further consider the appropriate balance between industry concerns and the needs of the regulator and law enforcement.

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

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

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

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

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

### 13 **SECTION 503. REPORTS.**

14 (a) A licensee shall file with the [superintendent] within [45] days after the end of each  
15 [fiscal quarter] a consolidated financial statement including a balance sheet, income and expense  
16 statements, and a list of all authorized delegates, responsible individuals, and locations within  
17 this State which have been added or terminated by the licensee within the [fiscal quarter]. The  
18 licensee shall include the name and street address of each location and authorized delegate.

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

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

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

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

1 (4) the cancellation, interruption, or non-renewal of the licensee's bond, letter of  
2 credit; or other security;

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

7 (c) A licensee that does not file a report required by this section by the time designated  
8 for filing the report or does not include prescribed information in the report shall pay a penalty of  
9 [\$100] for each day that the report is not so filed or is incomplete, unless the [superintendent], for  
10 good cause, reduces the amount to be paid.

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

12 **Reporter's Note:** Reports are essential to the proper regulation of problem delegates or  
13 licensees. Although on-site examinations are authorized, the reporting requirements provide a  
14 cost efficient mechanism for regulators and industry members alike. Certain significant events  
15 must be reported immediately including a money-laundering allegation against a delegate. At the  
16 February 1998 meeting, Observers noted that it would be difficult for check cashers to produce  
17 detailed financial reports on a quarterly basis. Another time period may be desirable.  
18 Alternatively, the Drafting Committee should consider whether the contents of reports should be  
19 prescribed by regulation.

#### 20 **SECTION 504. CHANGE OF CONTROL.**

21 (a) A person or group of persons that proposes to acquire control shall give written notice  
22 to the [superintendent] and request approval of the acquisition.

23 (b) A licensee whose shares are traded on a national securities exchange shall give the  
24 [superintendent] written notice of a proposed change of control within [15] days after learning of  
25 the proposed change of control.

26 (c) A licensee whose shares are not traded on a national securities exchange shall give the  
27 [superintendent] written notice of a proposed change of control at least [30] days before the date



1 of the proposed change of control.

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

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

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

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

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

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

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

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

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

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

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

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

## 15 **SECTION 505. BOOKS, RECORDS, ACCOUNTS, AND DOCUMENTS.**

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

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

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

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

23 (4) settlement sheets received from authorized delegates;

24 (5) bank statements and bank reconciliation records;

25 (6) records of outstanding payment instruments;

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

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

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

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

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

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

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

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

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

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

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

1 states with racketeering statutes, it should be no longer than the criminal or the civil racketeering  
2 statute of limitations.

### 3 **SECTION 506. RECORDS OF TRANSACTIONS.**

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

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

17 **Source:** President's Commission Act Section 15.

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

### 23 **SECTION 507. MONEY LAUNDERING REPORTS.**

24 (a) A licensee must comply with federal currency reporting, record keeping, and  
25 suspicious transaction reporting requirements as set forth in 31 U.S.C Section 5311, 31 C.F.R.  
26 Part 103, and other federal and state laws pertaining to money laundering.

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

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

7 **Source:** President's Commission Model Financial Transaction Reporting Act, Section 5 (Reports  
8 to the Attorney General).

9 **Reporter's Note:** Observers at the October 1998 Drafting Committee meeting suggested this  
10 language. This Section permits licensees to comply with State reporting requirements by filing  
11 the appropriate federal anti-money laundering reports. For most jurisdictions, federal data and  
12 reports are available through FinCEN's Gateway computer system. According to information the  
13 Drafting Committee received from the National Association of Attorneys General, seven states  
14 receive such data on a computer tape from FinCEN under a memorandum of understanding.

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

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

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

31 **Discussion:** Approximately ten states require that a money services business comply with all  
32 federal and state money laundering and currency transaction reporting laws. State laws typically  
33 replicate the federal law and require that cash transactions in excess of \$10,000 be reported to a  
34 state authority as well as to the U.S. Treasury. Most of the state reporting legislation does not  
35 specifically address money services businesses (but may apply to money services businesses by  
36 implication). Several states including Colorado, Connecticut, Idaho, Indiana and Oklahoma  
37 require financial institutions to file suspicious activity reports concurrently with Federal and  
38 State authorities. Arizona has its own suspicious activity form for financial institutions.

1 Suspected money laundering activities are reported to Arizona's Attorney General on a one-page  
2 form. Georgia states that each financial institution shall keep a record of currency transactions in  
3 excess of \$10,000 and that those reports shall be filed with this State within 15 days of the  
4 transaction. The Georgia Department of Banking and Finance, however "may promulgate  
5 regulations that permit currency transaction reports filed by financial institutions with federal  
6 agencies pursuant to requirements of federal law to satisfy the currency transaction filing  
7 requirements . . . provided that the department . . . will have access to the currency transaction  
8 reports filed with the federal agencies." Georgia Financial Institutions Code Section 7-1-912.

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

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

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

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

26 **SECTION 508. ELECTRONIC FILING OF RECORDS.** The [superintendent], by  
27 rule, may order that an application, report, or record that is required to be filed pursuant to [this  
28 Act] be filed electronically.

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

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

## 35 **SECTION 509. CONFIDENTIALITY OF RECORDS.**

36 (a) Except as otherwise provided in this [Act], the records of the [superintendent] relating  
37 to licensees and authorized delegates are not public records and are not open to inspection by the

1 public. Neither the [superintendent] nor an employee of the [superintendent] may disclose  
2 information obtained in the discharge of official duties to a person not employed by the  
3 [superintendent].

4 (b) The [superintendent] may disclose confidential information pertaining to a licensee or  
5 authorized delegate to the following persons:

6 (1) a representative of a federal agency insuring accounts of the licensee or  
7 authorized delegate;

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

14 (3) the attorney general of this State;

15 (4) to a federal, state, or [county] grand jury in response to a lawful subpoena; and

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

18 (c) The [superintendent] may:

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

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

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

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

8 **Source:** President's Commission Act Section 24.

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

## 12 ARTICLE 6

### 13 PERMISSIBLE INVESTMENTS

#### 14 SECTION 601. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

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

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

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

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



ambiguous.

**(ALTERNATIVE 1)**

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

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

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

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

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

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

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

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

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

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

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

9 (ALTERNATIVE 2)

10 **SECTION 602. TYPES OF PERMISSIBLE INVESTMENTS.**

11 (a) Without limitation, the following investments are permissible under Section 601:

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

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

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

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

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

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

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

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

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

licensee's total permitted investments; or

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

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

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

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

**Reporter's Note:** The Drafting Committee felt that the provisions were more substantive in nature as to what constituted a permissible investment and therefore have been moved from the definitions to Article 6.

At the October 1998 Drafting Committee meeting, Drafting Committee Members expressed some concerns about former Subsections 1-102(a)(26)(e)--(g) which permitted investments -- without any limitations or caps on percentage of the licensee's portfolio invested in any of these items -- in any of the following items:

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

The Drafting Committee felt as did some Observers that these types of investments posed higher levels of risk to the licensee and ultimately to the public than was appropriate for money services businesses. Industry Observers noted, however, that such investments were commonly included in state legislation. In fact, the MTRA outline lists such investments as permissible though it

1 states that loans should not exceed 10% of the net worth of a licensee and the amount of such  
2 laws as total percentage of permissible investments may be subject to legislation.

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

12 The Drafting Committee may wish to consider the permissible investment provisions contained  
13 in states where money services businesses are engaged in higher volumes of business such as  
14 California, New York, Florida, and Texas as a basis for comparison.

## 15 **ARTICLE 7**

### 16 **ENFORCEMENT**

#### 17 **SECTION 701. ORDERS TO CEASE AND DESIST; POWERS OF SUSPENSION** 18 **AND REVOCATION.**

19 (a) After notice and hearing, the [superintendent] may issue an order to cease and desist,  
20 suspend, or revoke a license, or order a licensee to revoke the designation of an authorized  
21 delegate if:

22 (1) the licensee fails to comply with this [Act] or a rule adopted or an order issued  
23 under this [Act];

24 (2) the licensee or authorized delegate of the licensee engages in fraud,  
25 misrepresentation, deceit, or gross negligence;

26 (3) an authorized delegate violates the Bank Secrecy Act, a state or federal anti-  
27 money-laundering statute, or a rule adopted or an order issued under this [Act] as a result of the  
28 licensee's negligent failure to supervise the authorized delegate or as a result of the willful  
29 misconduct or willful blindness of the licensee;

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

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

7 (6) the competence, experience, character, or general fitness of the licensee or  
8 authorized delegate or a controlling person of the licensee or authorized delegate indicates that it  
9 is not in the public interest to permit the person to engage in the money services business;

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

11 (8) the licensee engages in any unsafe or unsound practice.

12 (b) In making the determination of whether a person is engaging in an unsafe or  
13 unsound practice, the [superintendent] may consider the size and condition of the money services  
14 business, the magnitude of the loss, the gravity of the violation, and the previous conduct of the  
15 person involved.

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

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

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

7 **Selected Issue:** Should the cease and desist provisions include specific reference to a licensee's  
8 books and records and also violations of the recordkeeping provisions of the Proposed Act?

9 **Reporter's Note:** The Drafting Committee received comments from Observers who noted that  
10 certain provisions of the October 1998 draft should not have been omitted from the February  
11 1998 draft. These provisions (former Sections 1001(a)(3) and (5) in the October 1998 draft)  
12 permitted the superintendent to issue a cease and desist order against the licensee in the event  
13 that the licensee failed to "maintain, preserve and keep available for examination all books,  
14 accounts or other documents required by the [Act] or any rules or orders adopted pursuant to the  
15 [Act]" or if the "licensee has failed to comply with its recordkeeping and reporting requirements  
16 under the Act." The Drafting Committee previously felt that these provisions were included in  
17 current subparagraph (a)(1) which allows the Superintendent to issue a cease and desist order for  
18 any violation of the Act. Failing to maintain records or violating recordkeeping requirements  
19 would appear to constitute a violation of the Act. The Drafting Committee may want to consider,  
20 however, whether these provisions should be specifically included in the next draft.

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

## 26 **SECTION 702. AUTHORIZED DELEGATES; ORDERS TO CEASE AND** 27 **DESIST.**

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

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

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

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

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

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

7 (6) the authorized delegate commits a felony.

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

9 **(SUBSECTION (b) ALTERNATIVE 1)**

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

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

15 **Reporter's Note:** Some criticism has been made about the limitations included in this provision.  
16 First, the licensee's responsibility for conduct of the authorized delegate is limited to actions  
17 relating to the contract between the license and its authorized delegates. Second, the licensee is  
18 only responsible for wrongful conduct of the delegate which it had knowledge of. Subparagraph  
19 (b) Alternative 2 is a proposed alternative which would eliminate these limitations. The issue is  
20 to what extent the Licensee should have incentives to monitor its delegates and to promote  
21 compliance with the Proposed Act.

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

27 **(SUBSECTION (b) ALTERNATIVE 2)**

28 (b) If an authorized delegate violates this [Act] or a rule adopted or an order issued under  
29 this [Act] as a result of the licensee's negligent failure to supervise or as result of the willful



misconduct or willful blindness of the licensee, the licensee is responsible for the violation.

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

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

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

(c) In making the determination of whether a person is engaging in an unsafe or unsound practice, the [superintendent] 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 703. TEMPORARY ORDERS TO CEASE AND DESIST.**

(a) Whenever the [superintendent] determines that a violation of this [Act] by a licensee or authorized delegate is likely to: cause immediate and irreparable harm to the licensee, its customers, or the 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 shall become effective upon service upon the

1 licensee or authorized delegate.

2 (b) The temporary order shall remain effective and enforceable pending the completion of  
3 an administrative proceeding pursuant to Section 701 or Section 702.

4 (c) Within 10 days after a licensee or an authorized delegate is served with a temporary  
5 order to cease and desist, the licensee or authorized delegate may apply to the [appropriate court],  
6 for an injunction setting aside, limiting, or suspending the enforcement, operation, or  
7 effectiveness of the temporary order pending the completion of an administrative proceeding  
8 pursuant to Section 701 or Section 702.

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

11 **Reporter's Note:** Some Observers had expressed concern at the October 1998 meeting, that the  
12 Proposed Act did not provide the superintendent with sufficient authority to deal with exigent  
13 situations through the use of expedited procedures. New Section 703 attempts to provide the  
14 superintendent with limited authority to issue temporary orders to cease and desist without first  
15 going through notice and hearing procedures. Drafting Committee members should consider  
16 whether such a provision should be included separately or as part of the cease and desist  
17 provisions which are found in Sections 701 and 702.

18 **Selected Issue:** Should there be a similar provision which allows the superintendent to suspend a  
19 license prior to a hearing if he or she determines that such an action is in the public interest?

20 **SECTION 704. CONSENT ORDERS.** The [superintendent] may enter into a consent  
21 order at any time with a person to resolve a matter arising under this [Act]. A consent order must  
22 be signed by the person that it is issued to or by the person's authorized representative, and must  
23 indicate agreement with the terms contained in the order. A consent order need not constitute an  
24 admission by a person that this [Act] or a rule adopted or an order issued under this [Act] has  
25 been violated.

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

27 **SECTION 705. CIVIL PENALTIES.**

28 (a) A person that violates this [Act] may be assessed a civil penalty by [the

superintendent] in an amount equal to [\$1,000] per day plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

**Source:** Florida Money Transmitters' Code Section 560.117.

**Reporter's Note:** The current Section 804 was the second of two alternative subparagraphs included in the February 1998 draft. The first alternative capped the maximum civil penalty at \$100 per day per violation. The same provision also allowed licensees an opportunity to cure their violations. The Drafting Committee felt that such a "cure" provision eliminated much of the effectiveness of the civil money penalty provision. The second alternative, which was retained in this draft, has been modified. Previously, there was a reference to a fine equaling an amount equal to the gross business engaged in connection with the violation. The Drafting Committee and Observers alike considered this too imprecise a formula. Instead, a civil money penalty of \$1,000 per day has been suggested. Additionally, former Section 804(b) has been eliminated. This provision included a separate fine of \$1,000 per day for engaging in money services business without a license. It was decided that this was a per se violation of the Proposed Act and therefore did not need to be the subject of a new act.

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

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

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

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

## **SECTION 706. CRIMINAL PENALTIES.**

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

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

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

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

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

## 11 **SECTION 707. UNAUTHORIZED ACTIVITIES.**

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

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

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

21 **Source:** Florida Money Transmitters' Code Section 560.125 (with modifications).

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

## 26 **ARTICLE 8**

### 27 **ADMINISTRATIVE PROCEDURES**

1           **SECTION 801. ADMINISTRATIVE PROCEDURES.** All administrative proceedings

2           under this [Act] must be conducted in accordance with the [state administrative procedure act].

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

4           **Reporter's Note:** The Drafting Committee noted that the Act should generally conform to the  
5           provisions of the Model State Administrative Procedure Act. MTRA members also expressed  
6           concern that the Act conforms to State administrative procedure laws.

7           **SECTION 802. HEARINGS.**

8           (a) The [superintendent] may not suspend or revoke a license, issue an order to cease and  
9           desist, revoke the designation of an authorized delegate, or assess a civil penalty without holding  
10          a hearing. The [superintendent] shall also hold a hearing when requested to do so by an applicant  
11          whose application is denied.

12          (b) The [superintendent] shall give a licensee or an applicant at least [10] days written  
13          notice of the time and place of a hearing by registered or certified mail, addressed to the licensee  
14          or applicant at its last-known address.

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

16          **Reporter's Note:** Except for the issuance of temporary orders pursuant to Section 703, the  
17          superintendent is required to provide notice and have a hearing before taking any disciplinary or  
18          enforcement actions against a licensee or its authorized delegates. The President's Commission  
19          Act only refers to suspension, revocation and denial of licenses. Section 802 has been extended  
20          further to include cease and desist authority and also the ability to assess civil penalties. Part of  
21          the President's Commission Act text has been omitted:

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

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

1 provide the address and telephone number of the [superintendent]."

2 The Drafting Committee decided to omit this provision as it placed a heavy regulatory burden on  
3 the superintendent or regulator with respect to referrals from licensees. Additionally, the Drafting  
4 Committee felt that this provision might overlap with existing consumer protection legislation  
5 provisions. The Proposed Act is not meant to repeal any existing consumer legislation.

## 6 **ARTICLE 9**

### 7 **MISCELLANEOUS PROVISIONS**

#### 8 **SECTION 901. APPOINTMENT OF [SUPERINTENDENT] AS AGENT FOR** 9 **SERVICE OF PROCESS.**

10 (a) A licensee or a person that engages in the business without being licensed is deemed  
11 to have done both of the following:

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

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

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

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

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

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

1 **Source:** USL Drafting Manual.

2 **SECTION 903. SEVERABILITY.** If any provision of this [Act] or its application to  
3 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
4 applications of this [Act] which can be given effect without the invalid provision or application,  
5 and to this end the provisions of this [Act] are severable.

6 **Source:** USL Drafting Manual.

7 **SECTION 904. EFFECTIVE DATE.**

8 **Source:**

9 **SECTION 905. SAVINGS AND TRANSITIONAL PROVISIONS.**

10 **Source:**