

DRAFT

FOR DISCUSSION ONLY

MONEY SERVICES BUSINESS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~September 1998~~

~~DRAFT NONDEPOSITORY PROVIDERS
OF FINANCIAL SERVICES ACT~~

February 1999

MONEY SERVICES BUSINESS ACT

With Notes

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1 | Reporter or Commissioners. Proposed statutory language, if any.
2 | may not be used to ascertain legislative meaning of any
3 | promulgated final law.
4 |
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~~FINANCIAL SERVICES~~MONEY SERVICES BUSINESS ACT

TABLE OF CONTENTS

~~PART~~ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE.

SECTION 102. DEFINITIONS.

~~PART 2~~

~~SCOPE, EXCEPTIONS AND EXCLUSIONS~~

~~SECTION 201. SCOPE.~~

SECTION ~~202.~~103. SUPERVISORY POWERS OF [SUPERINTENDENT].

SECTION ~~203.~~104. EXCLUSIONS.

SECTION 105. LICENSE REQUIRED.

ARTICLE 2

LICENSING OF MONEY TRANSMITTERS AND PAYMENT INSTRUMENT SELLERS

SECTION 201. APPLICATION FOR LICENSE.

SECTION 202. SECURITY.

SECTION 203. ISSUANCE OF LICENSE.

SECTION 204. ~~LICENSE REQUIREMENT.~~RENEWAL OF LICENSE.

~~PART 3~~

~~LICENSING OF MONEY TRANSMITTERS, CHECK SELLERS, CHECK ISSUERS [AND STORED
VALUE PROVIDERS]~~SECTION 205. APPLICATION AND LICENSE FEES.

SECTION 206. NET WORTH.

ARTICLE 3

LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS

SECTION 301. APPLICATION FOR LICENSE.

1 ~~SECTION 302. BOND AND NET WORTH REQUIREMENTS.~~ISSUANCE OF LICENSE.

2 ~~SECTION 303. ISSUANCE~~RENEWAL OF LICENSE.

3 ~~SECTION 304. LICENSE RENEWAL.~~APPLICATION AND LICENSE FEES.

4 ~~SECTION 305. LICENSE FEE.~~NET WORTH.

5 ~~SECTION 306. NET WORTH.~~

6 ~~PART 4~~

7 ~~LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS~~ARTICLE 4

8 AUTHORIZED DELEGATES

9 ~~SECTION 401. APPLICATION FOR LICENSE.~~RELATIONSHIP BETWEEN

10 LICENSEES AND AUTHORIZED DELEGATES.

11 ~~SECTION 402. ISSUANCE OF LICENSE.~~SCOPE OF AUTHORIZED DELEGATE'S

12 ACTIVITY.

13 ~~SECTION 403. LICENSE RENEWAL.~~UNAUTHORIZED ACTIVITIES.

14 ~~SECTION 404. LICENSE FEE.~~

15 ~~SECTION 405. NET WORTH.~~

16 ~~PART 5~~

17 ~~AUTHORIZED DELEGATES~~ARTICLE 5

18 EXAMINATIONS, REPORTS, AND RECORDS

19 ~~SECTION 501. RELATIONSHIP BETWEEN LICENSEES AND AUTHORIZED~~

20 ~~—~~AUTHORITY TO CONDUCT EXAMINATIONS.

21 ~~DELEGATES.~~

22 ~~SECTION 502. SCOPE OF AUTHORIZED DELEGATE ACTIVITY.~~JOINT

23 EXAMINATIONS.

24 ~~SECTION 503. PROHIBITED TRANSACTIONS.~~

25 ~~PART 6~~

26 ~~EXAMINATIONS, REPORTS AND RECORDS~~

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

1 ~~SECTION 602.— JOINT EXAMINATIONS~~

2 ~~SECTION 603.— REPORTS.~~

3 SECTION ~~604.—~~504. CHANGE OF CONTROL.

4 SECTION ~~605.— BOOKS AND RECORDS~~

5 ~~SECTION 606.— TRANSACTION RECORDS.~~505. BOOKS, RECORDS, ACCOUNTS,
6 AND DOCUMENTS.

7 SECTION 506. RECORDS OF TRANSACTIONS.

8 SECTION ~~607.—~~507. MONEY LAUNDERING REPORTS.

9 SECTION 508. ELECTRONIC FILING OF RECORDS.

10 ~~608.—~~SECTION 509. CONFIDENTIALITY OF RECORDS.

11 ~~PART 7~~ARTICLE 6

12 PERMISSIBLE INVESTMENTS

13 SECTION ~~701.—~~601. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

14 ~~PART 8~~

15 ~~ENFORCEMENT.~~

16 ~~SECTION 8001.— CEASE AND DESIST ORDERS; SUSPENSION AND~~
17 ~~— REVOCATION POWERS.~~SECTION 602. TYPES OF PERMISSIBLE
18 INVESTMENTS.

19 ARTICLE 7

20 ENFORCEMENT

21 SECTION 701. ORDERS TO CEASE AND DESIST; POWERS OF SUSPENSION AND
22 REVOCATION.

23 SECTION ~~8002.—~~702. AUTHORIZED DELEGATES; ~~CEASE AND DESIST~~
24 ~~—~~ORDERS TO CEASE AND DESIST.

25 ~~ORDERS.~~

26 SECTION 703. TEMPORARY ORDERS TO CEASE AND DESIST.

27 SECTION ~~8003.—~~704. CONSENT ORDERS.

1 SECTION ~~8004.~~705. CIVIL PENALTIES.

2 SECTION ~~8005.~~706. CRIMINAL PENALTIES.

3 SECTION ~~8006.~~UNAUTHORIZED ACTIVITY.

4 ~~SECTION 8007.~~INJUNCTIONS.

5 ~~PART 9~~

6 ~~ADMINISTRATIVE~~707. UNAUTHORIZED ACTIVITIES.

7 ARTICLE 8

8 ADMINISTRATIVE PROCEDURES

9 SECTION ~~901.~~801. ADMINISTRATIVE PROCEDURES.

10 SECTION ~~902.~~802. HEARINGS.

12 ~~PART 10~~ARTICLE 9

13 MISCELLANEOUS PROVISIONS

14 ~~SECTION 1001.~~CONSUMER DISCLOSURE.

15 SECTION ~~1002.~~901. APPOINTMENT OF [SUPERINTENDENT] AS AGENT ~~FOR~~
16 FOR SERVICE OF PROCESS.

17 SECTION ~~1003.~~902. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

18 SECTION ~~1004.~~903. SEVERABILITY.

19 SECTION ~~1005.~~904. EFFECTIVE DATE.

20 SECTION ~~1006.~~905. SAVINGS AND TRANSITIONAL PROVISIONS.

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22

1 |
2 |

~~PART 1.~~

~~GENERAL PROVISIONS.~~

|

1 ARTICLE 1

2 GENERAL PROVISIONS

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

5 Reporter's Note: The Proposed Money Services Business Act
6 ("Proposed Act") was previously referred to as the Proposed
7 Nondepository Providers Act.

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

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

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

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

29
30 ~~SUBPARAGRAPH (2) ALTERNATIVE 1~~

31 ~~(2) "Authorized~~ (2) "Authorized delegate" means an entity
32 ~~designated by the licensee under this [Act] to sell or issue payment~~
33 ~~instruments, to transmit funds, cash checks, sell or exchange currency, or~~
34 ~~sell, issue, or redeem stored value products on behalf of a person~~
35 designated by a licensee to engage in a money services business
36 on behalf of the licensee.

37 **Source:** Model Act Regulating Money Transmitters Section 3 with

1 modifications.

2 ~~Reporter's~~**Reporter's Note:** It is important to clearly define the
3 outlets through which ~~money service businesses conduct their~~
4 ~~money services business conducts its~~ business. This definition
5 will help to define the legal relationship between ~~money service~~
6 ~~businesses~~ a money services business and those outlets. The Money
7 Transmitters ~~Regulators'~~Regulators' Association Model Legislation
8 Outline ("Model Legislation Outline") uses the term "authorized
9 agent" as an alternative to authorized delegate. ~~The Financial~~
10 ~~Crimes~~FinCEN, in its May 1997 Enforcement Network of the United
11 ~~States Department of Treasury ("FinCEN") in its recent~~ proposed
12 rulemaking concerning money ~~service businesses~~services
13 businesses, uses the term "agent" for those same entities. In its
14 comments, FinCEN notes that "Treasury intends that the concept of
15 ~~'agent'~~'agent' for the list requirement should be as broad as the
16 common law of agency would allow, that is, it would ~~extent~~extend
17 to any relationship that would be deemed to create obligations of
18 principal and agent at common law. Thus, for example, it is
19 likely that virtually all independent contractor arrangements for
20 money services businesses -- whatever their characterization for
21 employment law or income tax purposes -- would be treated as
22 creating principal-agent relationships to define the parameters
23 of the rights, obligations and direct and derivative liabilities
24 of the parties. See Restatement (Second) of Agency Sections
25 ~~2(e)~~28 and 14N." 62 Fed. Reg. 27895.

26
27 ~~27895. Finally, the~~The Non-Bank Funds Transmitters Group has
28 suggested another alternative, "money transmitter outlet" to
29 refer to independently owned sales outlets. The definition of
30 money transmitter outlet defines the entity as "a person, whether
31 or not licensed or required to be licensed, who is engaged in the
32 business of transferring funds through a money transmitter even
33 if incidental to another business."

34
35 ~~SUBPARAGRAPH (2) ALTERNATIVE 2~~

36 ~~(2) "Agent" means a person whom the licensee appoints as its~~
37 ~~agent with authority to conduct money service business activities~~
38 ~~on behalf of the licensee.~~

39 ~~Source: Modification of definition contained in Section 33043 of~~
40 ~~the California Financial Code.~~

41 ~~Reporter's Note: Rather than use the term delegate the committee~~
42 ~~may consider using the term "agent" to signify the relationship~~
43 ~~between a licensee and outlets that conduct business on behalf of~~
44 ~~the licensee.~~The principles of agency law may apply in some
45 states with respect to the relationship of the licensee and its
46 authorized delegates. Some of the Observers have noted that the
47 relationship of delegate and licensee should explicitly be
48 governed by agency principles. This issue needs to be discussed
49 again during the March 1999 drafting meeting.

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

7 **Source:** New

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

16
17 ~~who, for compensation sells currency in exchange for payment~~
18 ~~instruments received. The term does not include a~~previously, the
19 definition of check casher excluded "a person who cashes checks
20 in an amount less than or equal to [\$500] for any person on a
21 single~~day.~~

22 ~~**Source:** Florida Money Transmitters Code Section 560.102 (with~~
23 ~~modifications).~~

24 ~~**Reporter's Note:** The \$1,000 per day threshold is an attempt~~day."
25 Such definitions are used to exempt small businesses -- such as
26 grocery stores and businesses where check cashing is a service
27 offered to customers incidental to another business (e.g.,
28 hotels) -- from having to obtain a license. FinCEN, in its
29 proposed amendments to the Bank Secrecy Act used a \$500 per day
30 threshold. Many of the responses to FinCEN's proposed rules
31 advocated a higher dollar limit of license.

32
33 ~~\$1,000 or more.~~ An alternative definition that is used in some
34 of the states excludes "persons engaged in check cashing [or
35 currency exchanging] which is incidental to the retail sale of
36 goods and services, whose compensation for cashing checks [or
37 exchanging currency] does not exceed 5 percent of the total gross
38 income from the retail sale of goods or services . . .~~."~~

39
40 The ~~Drafting Committee, at its February meeting, noted that the~~
41 ~~\$1,000 threshold might be too high and would potentially exempt~~
42 ~~too many money service businesses. Consequently, the recommended~~
43 ~~threshold remains at \$500.~~ Florida State Department of Banking has

1 drafted suggested amendments to its Money Transmitters' Code. To
2 date, these amendments have not been presented to the
3 legislature. The proposed amendments include a revised definition
4 of check casher:

5 "Check casher" means a person who, for
6 compensation or gain, or in the expectation of
7 compensation or gain, either directly or
8 indirectly, sells currency in exchange for payment
9 instruments received, except travelers checks and
10 foreign-drawn payment instruments.

11
12 Suggested Amendments to Florida Money Transmitters' Code
13 Section 560.120.

14
15 _____ (4) "Check cashing" means ~~exchanging~~accepting, for
16 compensation a payment instrument in exchange for money delivered
17 to ~~the~~a presenter at the time and place of the presentation.

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

20 **Reporter's Note:** It is important to have a definition for each of
21 the services that have been grouped under the general heading of
22 ~~nondepository providers of financial services.~~
23 money services business. The Florida Banking Department has
24 proposed an amendment to the

25 ~~(5) "Check issuer" means a person who engages in the~~
26 ~~business of issuing payment instruments and who is responsible~~
27 ~~for payment on the instruments, other than a person who issues~~
28 ~~payment instruments in an amount less than \$500 in currency or~~
29 ~~monetary or other negotiable instrument to any person on any day.~~

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

33
34 ~~(6) "Check seller" means a person who engages in the~~
35 ~~business of selling payment instruments issued by another person,~~
36 ~~even if incidental to another business.~~

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

41 ~~**Reporter's Note:** An alternative term is "Payment Instrument~~
42 ~~Seller."~~

~~(7) "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.~~

~~**Source:** New.~~

~~**Reporter's Note:** This definition is 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 provided in the proposed act are an attempt to distinguish between closed and open systems for purposes of licensing and regulation. Other exceptions that may need to be included in the definition of stored value include (i) a small dollar exception for issuers and (ii) an exception for merchants or others that honor stored value instruments.~~

~~(8) "Control" means ownership of, or the power to vote, 25% or more of the outstanding voting securities of a licensee or controlling person. 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.~~

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

~~(9) "Controlling person" means any person directly or indirectly in control of a licensee. 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,

1 directly or indirectly, 25 percent or more of a class of voting
2 securities of a licensee or controlling person; or

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

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

9 **Source:** Federal Bank Holding Company Act, 12 U.S.C.A. Section
10 1842(a)(2) (with modifications).

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

19
20 This is a very flexible category that allows for a broader
21 interpretation of the concept of control. Additionally, the Bank
22 Holding Company Act includes a presumption that a company that
23 owns five percent or less of a bank's shares is not in control.
24 Thus, there is a presumption against control if share ownership
25 does not exceed five percent.

26
27 **Selected Issues:**

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

36
37 (6) "Controlling person" means a person having control.

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

41 **Reporter's Note:** Some Observers have commented that the
42 definition of control essentially negates the use of the terms
43 "directly or indirectly" in the definition of controlling
44 person. This was the case previously because the circumstances

under which the aggregation of shares would occur was unclear.

~~(10)~~ (7) "Currency" means the coin and paper money of the United ~~States or of any other country that~~States, or of a foreign government which is designated as legal tender and ~~that~~which circulates and is customarily used and accepted as a medium of exchange in ~~a foreign~~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.~~

~~(11)~~ (8) "Currency exchanger" means a person ~~who exchanges, that,~~ for compensation, ~~currency of the United States or a foreign government to~~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."

~~(12)~~ (10) "Executive officer" means ~~the~~ licensee's president, chairman of the executive committee, ~~senior officer responsible for the licensee's business,~~ a chief financial officer, ~~and~~ responsible individual, or any other ~~person~~ individual that performs similar functions.

Source: Model Act Regulating Money Transmitters, Section 3.

~~(13) "Key Shareholder" means any person or group or persons acting in concert who is the owners of [25%] percent or more of any voting class of the stock of an applicant.~~

(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,

1 according to generally accepted accounting principles, is
2 considered significant to an applicant's or licensee's financial
3 condition and responsibility, and is referred to in that
4 applicant's or licensee's [annual audited financial statements],
5 reports to shareholders, or similar documents.

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

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

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

11 ~~(15) "Location" means a place of business at which money~~
12 ~~service business activity occurs.~~

13 ~~**Source:** New.~~
14

15 ~~(16) "Material litigation" means litigation that, according~~
16 ~~to generally accepted accounting principles, is considered~~
17 ~~significant to an~~**Reporter's Note:** ~~Some Observers noted that the~~
18 ~~language "and is referenced in that~~ applicant's or licensee's
19 ~~financial health, and is referenced in that entity's~~annual
20 ~~reports" seems to leave what is "material" up to the licensee to~~
21 ~~decide. However, this does not take annual audited financial~~
22 ~~statements, reports to shareholders, or similar documents.~~

23 ~~**Source:** Model Act Regulating Money Transmitters Section 3.~~
24

25 ~~—(17) "Mobile location" means a mobile check cashing facility,~~
26 ~~where on no more than [2] days per week, on property occupied by~~
27 ~~an employer, a licensed check casher may, under written contract~~
28 ~~with the employer, engage in the business of cashing payroll~~
29 ~~checks for the employees of the employer.~~

30 ~~**Source:** Connecticut Negotiable Instruments, Check and Check~~
31 ~~Cashing Services Act, Section 36a-580.~~

~~Reporter's Note:~~ The Drafting Committee recommended that mobile check cashing facilities be included as a specific type of location.

~~—into account that the licensee would have to comply with certain accounting principles in preparing an annual report.~~

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

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

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

~~(18)~~ ~~(16)~~ "Money" means a medium of exchange that is authorized or adopted by a domestic or foreign government ~~and government. The term~~ includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more ~~nations}~~ governments.

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

~~PARAGRAPH (19) ALTERNATIVE 1~~

~~(19) "Money service business" means a person who is located or doing business within this State, as an organized business concern, in one or more of the capacities listed as follows:~~

~~(A) currency dealer or exchanger;~~

~~(B) check issuer;~~

~~(C) check seller;~~

~~(D) check casher;~~

~~(E) money transmitter; or~~

~~(F) stored value provider.~~

~~**Source:** FinCEN Proposed Amendments to Bank Secrecy Act Regulations B Definition and Registration of money Service Businesses (with modifications) amending 31 C.F.R, Part 103. Reporter's Note: FinCEN defines each of the money service businesses within the definition itself. This draft includes general definitions of each money service business as well as a global definition. FinCEN also uses the terms "issuer of traveler checks, money orders or stored value rather than check issuer" and "seller or redeemer of traveler's checks, money orders, or stored value." This draft uses the term check seller and check issuer to more closely mirror existing state legislation.~~

~~PARAGRAPH (19) ALTERNATIVE 2~~

~~(19) "Money service business" means a person who is located or doing business in this State,~~ (17) "Money services business" means a person that is licensed under this [Act] or that engages in the business (see definition) including a check casher, checkpayment instrument seller, money transmitter, and stored value provider, whocurrency exchanger, that does any of the following:

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

~~_____ (B) engages in the business of receiving money forthe transmissionef or transmitting money;~~

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

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

~~**Source:** Model Money Transmitter Licensing and Regulation Act.President's Commission Act Section 4(k) (with modifications). Reporter's Note: The Model Money Transmitter Licensing and~~

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

~~PARAGRAPH (20) ALTERNATIVE 1~~

~~(20)~~ (18) "Money transmitter" means a person ~~who engages that~~ engages, for compensation, in the transmission of money by any means, including transmissions within this country or to or from locations outside this country by payment instrument, ~~wires, 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~~ 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.

~~**Reporter's Note:** Query to the Drafting Committee: Does~~ **Selected Issue:** Should the current definition of money transmitter (and also the definition of payment instrument defined below) include

1 ~~stored value providers? (See the Reporter's Note~~electronic
2 currency providers who provide customers with the ability to
3 transmit funds over the Internet?
4 ~~included after Section 301)~~**Discussion:** At present, several states
5 ~~including Connecticut and West Virginia~~ have amended their money
6 transmission legislation to include stored value ~~providers~~
7 ~~including Connecticut and West providers. Virginia.~~ Other states,
8 such as Texas, have included stored value providers by
9 interpretation. West Virginia defines "currency transmission" or
10 "money transmission" to include "the transmission of funds
11 through the issuance and sale of stored value cards which are
12 intended for general acceptance and use in commercial or consumer
13 transactions." See WV ST. Section 32A-2-1-32A-2-1(6)

14
15 ~~PARAGRAPH (20) ALTERNATIVE 2~~

16 ~~(20) "Money transmitter" means a person who accepts currency~~
17 ~~or funds, either directly or through an authorized delegate, and~~
18 ~~transmits the currency or funds, or the value of currency or~~
19 ~~funds, by a means through a financial agency or institution, a~~
20 ~~Federal Reserve Bank, or other facility of the Board of Governors~~
21 ~~of the Federal Reserve System, or an electronic funds transfer~~
22 ~~network.~~

23 **Source:** ~~FincEN proposed amendments to the Bank Secrecy Act~~
24 ~~Regulations — Definition and Registration of Money Service~~
25 ~~Businesses amending 31 C.F.R. Part 103. Connecticut has taken a~~
26 ~~different approach and has defined the term "payment instrument"~~
27 ~~to include "electronic payment instruments." The Connecticut~~
28 ~~Department of Banking, in a memorandum prepared concerning the~~
29 ~~amendments to Connecticut law noted:~~

30
31 The explosive growth in electronic commerce and the
32 increasing use of electronic payment instruments such as
33 electronic travelers checks and other prepaid instruments,
34 exposes the consumers of such instruments to the potential
35 for loss due to the insolvency of the issuers of such
36 instruments or fraud. [The Connecticut bill] will provide
37 protection to consumers of electronic payment instruments by
38 making issuers of such instruments subject to the
39 Commissioner's jurisdiction and by imposing licensing, net
40 worth and bonding requirements on such issuers.

41
42 See Memorandum from John P. Burke, Banking Commissioner regarding
43 An Act Concerning Electronic Payment Instruments and Currency and
44 Foreign Transactions Reporting (S.B. 230) dated February 17, 1998
45 presented at Connecticut Banks Committee Public Hearing.
46

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

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

18
19 ~~(21) "Outstanding payment instrument"~~ (19) "Outstanding", in
20 regard to a payment instrument, means a payment instrument issued
21 by a licensee, which has been sold ~~in the United States~~ directly by
22 the licensee, or a payment instrument issued by a licensee which
23 has been sold by an authorized delegate of the licensee ~~in the~~
24 ~~United States~~, which has been reported to the licensee ~~has~~ having
25 been sold, and which has not yet been paid by or for the
26 licensee.

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

28
29 ~~(22)~~ (20) "Payment instrument" means a check, draft, money
30 order, ~~travelers check,~~ traveler's check whether in written or
31 electronic form, stored-value instrument, or other instrument
32 written order for the transmission or payment of money, sold or issued
33 to one or more persons, whether or not the money whether instrument is
34 negotiable or not negotiable, and whether or not in written or
35 electronic form. The term does not include a credit card voucher,
36 letter of credit, or any instrument that is redeemable by the
37 issuer in goods or services.

1 **Source:** Model Act Regulating Money Transmitters Section ~~3-~~
2 3 with modifications. The term "stored value instrument" has been
3 added. Additionally, proposed modifications to the definition of
4 "payment instrument" in the Florida Money Transmitters' Code
5 Section 560.103(14) have also been included which make reference
6 to writing or electronic form.

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

20
21 At the October 1998 meeting, the Drafting Committee affirmed its
22 decision to include stored value products and stored value
23 providers within the scope of the Proposed Act. Drafting
24 Committee members felt that the use of stored value as a means of
25 payment was similar to money transmission as a process.
26 Therefore, to the extent possible, the Drafting Committee
27 recommended including stored value within existing definitions of
28 money services businesses. Industry Observers subsequently made a
29 similar recommendation with respect to the expansion of the
30 definition of payment instruments. Currently, the Proposed Act
31 follows the Connecticut approach and treats stored value
32 instruments (including electronic traveler's checks) as payment
33 instruments.

34
35 (21) "Payment instrument seller" means a person that
36 engages in the business of issuing payment instruments or selling
37 payment instruments issued by another person, even if incidental
38 to another business.

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

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

45
46 ~~(23)~~ (22) "Person" means an individual, corporation,
47 business trust, estate, trust, partnership, limited liability

1 company, association, joint venture, or any other legal or
2 commercial entity. The term does not ~~[government, corporation]~~ or
3 ~~any other legal or commercial entity.~~
4 include government; governmental subdivision, agency, or
5 instrumentality; or public corporation.

6 **Source:** USL Drafting Manual.

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

9
10 ~~(24) "Permissible investments" means the following:~~

11 ~~(A) cash, certificates of deposit, or other debt~~
12 ~~obligations of a financial institution either domestic or~~
13 ~~foreign;~~

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

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

21 ~~(D) investment securities that are obligations of the~~
22 ~~United States, its agencies, or instrumentalities or obligations~~
23 ~~which are guaranteed fully as to principal and interest of the~~
24 ~~United States, or an obligation of a State, municipality, or any~~
25 ~~political subdivision thereof;~~

26 ~~(E) shares in a money market mutual fund, interest bearing bills~~
27 ~~or notes or bonds, debentures or stock traded on any national~~
28 ~~securities exchange or on a national over the counter market, or~~
29 ~~mutual funds~~ **Reporter's Note on former Section 1-102(26):** The
30 previous definition of "permissible investments" has been moved
31 into Article 7 of the Proposed Act. Many Observers and Drafting
32 Committee members felt that the definition primarily composed of

1 ~~one or more of~~ permissible investments ~~as described in this~~
2 ~~section, was more of a substantive provision that belonged within~~
3 ~~the permissible investments segment of the draft.~~

4 ~~(F) a demand borrowing agreement made to a corporation~~
5 ~~or a subsidiary of a corporation whose capital stock is listed on~~
6 ~~a national exchange; and~~

7 ~~(G) receivables that are due to a licensee from its authorized~~
8 ~~delegates pursuant to a contract which are not past due or~~
9 ~~doubtful of collection; or any other investments or security~~
10 ~~device approved by the [superintendent].~~

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

12 ~~Reporter's Note: It was previously noted by the Drafting~~
13 ~~Committee that the investments listed under (f) and (g) may be~~
14 ~~too risky to be included as permissible investments.~~

16 ~~(26)~~ (23) "Remit" means ~~either~~ to make direct payment of ~~the~~
17 funds to ~~the~~ a licensee or its representatives ~~s~~ authorized to
18 receive ~~those funds, the funds~~ or to deposit ~~the~~ funds in a bank,
19 credit union, ~~or~~ savings and loan association, or other similar
20 financial institution in an account specified by the licensee.

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

23 ~~(27)~~ (24) "Responsible individual" means an individual
24 ~~who~~ that is employed by a licensee and ~~who~~ that has principal
25 active management ~~within this country or to or from locations~~
26 ~~outside the country by payment instrument. wire, authority over~~
27 ~~the money services business of the licensee in this State.~~

28 ~~facsimile, or electronic transfer, courier, or otherwise.~~

29 ~~Source: Arizona Money Transmitter Act Section 6-1021.6-1210(4)~~
30 ~~(with modifications)~~

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

1 ~~(28)~~ (25) "State" means a State of the United States, the
2 District of Columbia, Puerto Rico, ~~the United States Virgin Islands~~, or
3 any ~~Territory~~territory or insular possession subject to the
4 jurisdiction of the United States.

5 **Source:** USL Drafting Manual.

6 ~~Reporter's~~Reporter's **Note:** This is standard ~~Conference~~NCCUSL
7 formulation.

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

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

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

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

- 34
35 • "Closed-end stored value product" means a stored value product
36 where the issuer is also the payee and the product is issued
37 to pay for a series of goods and services that are provided by
38 the issuer.

39
40 This definition was derived from A Commercial Lawyer's Take on
41 the Electronic Purse: An Analysis of Commercial Law Issues
42 Associated with Stored Value Cards and Electronic Money prepared

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

- 15 • ~~(29)~~ "Stored value" means funds or monetary value [greater than
16 \$500] represented in digital electronics format, whether or
17 not specially encrypted, and stored or capable of storage on
18 electronic media so as to be retrievable and transferable
19 electronically. [The term excludes funds or monetary value in
20 digital electronics format that is part of a closed-end stored
21 value network.]
22

23 Source: The previous definition of stored value was derived from
24 the FinCEN proposed amendments to the Bank Secrecy Act
25 Regulations B Definition and Registration of Money Services
26 Businesses amending 31 C.F.R. Part 103.

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

~~—The other major issue is at what dollar amount~~Selected Issue:
Should stored value products should be excluded from licensing.
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 ~~service businesses.~~services business. At the October
~~drafting committee~~Drafting Committee meeting, there was much
discussion of the issue of whether stored value products would be
created in the near future to carry sums over \$500. Additionally,
the Drafting Committee has previously discussed whether smaller
denomination products might be purchased and used to launder
funds in the aggregate (e.g., a money launderer buys several
hundred phone cards). Alternatively, certain stored value
products may hold less than \$500 but can be reloaded several
times and thus exceed the \$500 threshold.

~~(30) "Stored value~~ (27) "Stored-value provider" means
a person ~~who~~that engages in the business of issuing, selling, or
redeeming ~~open end stored value products.~~
stored-value instruments. The term includes a person that is
subject to regulation, supervision, and examination by a federal
or state banking agency and which does not issue, sell, or redeem
stored-value instruments to or from consumers.

Source: New.

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

The Drafting Committee will need to consider whether stored value
providers should remain distinct entities from payment instrument

1 sellers and if so, the function of payment instrument seller
2 should also be revised to exempt entities subject to supervision
3 by a banking regulator.
4

5 ~~(31) ["Superintendent"] means the [State~~ (28) "[Superintendent]"
6 means the [state superintendent of ~~Banks or other Senior State~~banks
7 or other senior state regulator charged with the regulation of
8 money ~~service businesses.]~~services businesses].

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

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

15
16 ~~(32)~~ (29) "Traveler's check" means an instrument identified
17 as a traveler's check on its face or commonly recognized as a
18 traveler's check and issued in a ~~money multiple of United States of~~
19 ~~foreign~~specified denomination of currency with a provision for a
20 specimen signature of the purchaser to be completed at the time
21 of purchase and a countersignature of the purchaser to be
22 completed at the time of negotiation.

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

24
25 ~~(33)~~ (30) "Unsafe or ~~Unsound~~unsound practice" means ~~any~~ practice
26 or conduct ~~which is contrary to generally accepted standards~~
27 ~~applicable to a specific money transmitter, or a violation of any~~
28 ~~prior order of an appropriatethat is contrary to [generally~~
29 accepted standards] applicable to a money services business, or
30 that is a violation of a rule or an order of the regulatory
31 agency, which practice or [Superintendent] under this act, if the
32 practice, conduct, or violation creates the likelihood of
33 material loss, insolvency, or dissipation of assets of the money

1 ~~transmitters~~services business or otherwise materially prejudices
2 the interests of its customers.

3 ~~In making this determination, the department may consider the~~
4 ~~size and condition of the money service business, the magnitude~~
5 ~~of the loss, the gravity of the violation, and the prior conduct~~
6 ~~of the person or business involved.~~

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

8 ~~Reporter's~~**Reporter's Note:** During its annual meeting in July
9 1998, the Money Transmitter Regulators Association ("MTRA") noted
10 that state regulators needed regulatory authority with respect to
11 the unsafe or unsound practices of money services businesses. The
12 Drafting Committee should also decide that the superintendent's
13 ability to take into account the size of the money services
14 business, the magnitude of the loss and the gravity of the money
15 service businesses.

16 17 ~~PART 2.~~

18 ~~SCOPE, EXCEPTIONS AND EXCLUSIONS.~~

19 ~~SECTION 201. SCOPE.~~ Except as otherwise provided in Section 203, this
20 ~~[Act] applies to money service businesses.~~violation should be moved into
21 the substantive provisions of the Proposed Act.

22 23 ~~SECTION 202.~~ SECTION 103. SUPERVISORY POWERS OF

24 ~~[SUPERINTENDENT]~~. Consistent with this [Act] the [superintendent]
25 has supervision over all money services businesses and their
26 authorized delegates.

27 **Source:** Florida Money Transmitters' Code Section 560.105.

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

37
38 ~~SECTION 203.~~ SECTION 104. EXCLUSIONS. This [Act] does not apply
39 to:

40 _____ (1) the United States or ~~any~~ department, agency, or

instrumentality thereof;

_____ (2) the United States ~~Post Office,~~ Postal Service;

~~(3) this State or any~~ _____ (3) a State or a political

subdivision thereof;

_____ (4) a bank, bank holding company, thrift company,

credit union, building and loan association, savings and loan

association, savings bank, or mutual bank, offices of an

international banking corporation, ~~Bank Service Act corporation~~

~~or Edge Act or agreement~~ branches of foreign banks, a corporation

organized pursuant to the Bank Service Act, or an Edge Act

Agreement Corporation organized under the laws of ~~any~~ State or

the United States, if the person does not issue, sell, or States

~~which do not issue or sell~~ provide payment instruments through an

authorized delegate ~~who~~ that is not such ~~an entity;~~ a person;

~~(5) the provision of~~ _____ (5) electronic funds transfer

of government benefits for a federal, ~~State, county, state,~~

[county], or governmental agency, ~~by a contractor~~ for and on

behalf of the United States, ~~or a department, agency, or~~

instrumentality thereof, or a State or ~~political subdivisions;~~

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

_____ (6) a board of trade designated as a contract market

under the Commodity Exchange ~~Act, and a person who~~ Act or a person

that in the ordinary course of business provides clearance and

settlement services for a board of ~~trade;~~

trade to the extent of its operation as such;

_____ (7) a person registered as a futures commission

merchant under the federal commodities laws to the extent of its

operation as such;

~~(8)~~ (8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency~~7~~ or an exemption from such registration granted under the federal securities ~~laws,~~

laws to the extent of its operation as such;

~~(9) any~~ (9) an operator of payment systems ~~operator~~ ~~that~~ which provides processing, ~~clearing and/or~~ clearing, or settlement services, between or among persons ~~exempt~~

~~under~~ excluded by this section or licensees, in connection with

wire transfers, ~~credit-card~~ credit-card transactions, ~~debit-card~~

~~transactions, stored value transactions, debit-card transactions,~~

stored-value transactions, automated clearing house transfers, or

similar funds transfers to the extent of its operation as such;

(10) a person registered as a securities broker-dealer

under the federal securities laws to the extent of its operation

as such; or

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

~~Source: Model Money Transmitter Licensing and Regulation Act~~

~~(with modifications).~~ (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 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~~

1 ~~definition of money service business to exclude regulated~~
2 ~~entities that are already subject to regulation by the SEC and~~
3 ~~the CFTC.~~

4
5 ~~—This draft omits reference to "businesses where sale of alcohol~~
6 ~~beverages and food are equal to or greater than fifty (50)~~
7 ~~percent of the total annual gross sales." The Drafting Committee~~
8 ~~believed that this exclusion was far too general to be adopted.~~

9
10 ~~—A new exclusion has been included under subsection (9) for~~
11 ~~payment systems operators who provide clearing and/or settlement~~
12 ~~services. This proposed exemption responds to the comments of~~
13 ~~observers who note that the provision of those services is~~
14 ~~distinct from the issuing or selling of payment instruments or~~
15 ~~stored value products.~~

16
17 **~~SECTION 204. LICENSE REQUIREMENT.~~**

18 ~~(a)A person may not engage in money service business~~
19 ~~activities without first obtaining a license under~~
20 ~~this [Act] or becoming an authorized delegate with~~
21 ~~respect to those activities.~~

22 ~~(b)A person who is not licensed under this [Act] or who is~~
23 ~~not an authorized delegate of the licensee with~~
24 ~~respect to those activities is presumed to be engaged~~
25 ~~in a business that is regulated by this [Act] and~~
26 ~~that requires a license if the person advertises,~~
27 ~~solicits, or holds himself or herself out as a money~~
28 ~~service business and engages in money service~~
29 ~~business activities.~~

30 ~~(c)A person who engages in money service business activities~~
31 ~~regulated in this [Act] only as an authorized~~
32 ~~delegate of a licensee and acts solely within the~~
33 ~~scope of a contract between the authorized delegate~~
34 ~~and the licensee is not required to apply for a~~
35 ~~license. A person who is an authorized delegate but~~

~~who also engages in a money service business activity
other than as an authorized delegate must apply for a
license under part 2 or part 3 of this [Act].~~

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

~~**Source:** Model Act Regulating Money Transmitters Section 2. combined with Model Money Transmitter Licensing and Regulation Act Section 5; The restrictions on transfer or assignment of a license comes from California Financial Code Section 12219 which prohibits the transfer of check selling licenses.~~

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

~~PART 3.~~

~~LICENSING OF MONEY TRANSMITTERS, CHECK SELLERS, CHECK ISSUERS
[AND STORED VALUE PROVIDERS].~~

~~SECTION 301. APPLICATION FOR LICENSE.~~

~~(a) No person shall engage for consideration, nor in any manner advertise that they engage in money transmission, sell or issue a payment instrument, [or provide stored value products], without first obtaining a license under the provisions of this part.~~

~~(b) A person licensed under this part is permitted to engage in money transmission, sell or issue payment instruments, or provide stored value products. A person registered under this part may also engage in check cashing and currency exchange activities as authorized under part 3 of this [Act].~~

~~(c) A person applying for a license under this part must do so in writing, under oath, and in the form prescribed by the~~

1 ~~[superintendent]. The application shall set forth such~~
2 ~~information as the [superintendent] reasonably requires,~~
3 ~~including but not limited to:~~

4 ~~(1) the name and address of the applicant, including any~~
5 ~~fictitious or trade names used by the applicant in~~
6 ~~the conduct of its business;~~

7 ~~(2) the history of applicant's material litigation;~~

8 ~~(3) a description of the activities conducted by the~~
9 ~~applicant, the applicant's history of operations, and the~~
10 ~~business activities in which the applicant seeks to engage in~~
11 ~~this State;~~

12 ~~(4) a list of the applicant's proposed authorized~~
13 ~~delegates, including the location or locations in its State in~~
14 ~~which the applicant and its authorized delegates propose to~~
15 ~~conduct money transmission activities;~~

16 ~~(5) a sample form authorized delegate contract, if~~
17 ~~applicable; sample form of payment instrument, if~~
18 ~~applicable.~~

19 ~~(6) the name and address of the clearing financial~~
20 ~~institution or financial institutions through~~
21 ~~which the applicant's payment instruments will be~~
22 ~~payable; and~~

23 ~~(7) documents confirming that the net worth and bonding~~
24 ~~requirements set forth in section have or will be~~
25 ~~satisfied.~~

26 ~~(b) If the applicant is a corporation, the applicant shall~~
27 ~~also provide such information as the [superintendent]~~

requires, including, but not limited to:

(1) the date of the applicant's incorporation and state of incorporation;

(2) a certificate of good standing from the state or country in which the applicant was incorporated;

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

(4) the name, business and residential address, and employment history, for the past [5] years for each executive officer, key shareholder, and responsible person;

(5) the history of material litigation and criminal convictions for each executive officer, key shareholder and responsible person;

(6) copies of the applicants audited financial statements for the current year, and if available, for the preceding [2] year period. In cases where the applicant is a wholly owned subsidiary of another corporation, the parent's consolidated audited financial statements may be submitted to satisfy this requirement;

(7) copies of the applicant's unconsolidated unaudited financial statements for the current year, if available, and if available, for the preceding

~~{2}year period; and~~

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

~~(c)Each applicant that is not a corporation shall also
provide such information as the [superintendent]
reasonably requires, including, but not limited to:~~

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

~~(2)the name, business and residential addresses, personal
financial statements and employment history for the
past [5] years for each individual having a controlling
ownership interest in the applicant, and each
responsible person;~~

~~(3)the history of material litigation and criminal
convictions for each individual having a controlling
ownership interest in the applicant and each
responsible person; and~~

~~(4)copies of the applicant's audited financial statements
for the present year, and if available for the
preceding [2] years.~~

~~—— (c) The [superintendent] may waive any requirement of this
section or permit an applicant to submit substituted information
in lieu of the information required by this section.~~

~~**Source:** Arizona Money Transmitter Law Section 6-1203; Model Money~~

~~Transmitter Licensing and Regulation Act Section 7; Florida Money Transmitter Code Section 560.205.~~

~~**Reporter's Notes: Selected Issue:** Should the Draft NDP Act include separate licensing regimes for money transmitters and check sellers, and stored value providers (as one group) and check cashers and currency exchangers~~
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

1 in the business other than as an authorized delegate must apply
2 for a license under either Article 2 or Article 3.

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

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

10 **Reporter's Note:** The act will need to distinguish between
11 authorized delegates who provide services solely pursuant to
12 contracts with money services businesses and those entities who
13 serve as delegates but also operate as principals with respect to
14 some aspect of money services. For example, a check casher might
15 operate as a principal with respect to check cashing services and
16 also operate as an authorized delegate for a money transmitter.

17 **ARTICLE 2**

18 **LICENSING OF MONEY TRANSMITTERS AND PAYMENT INSTRUMENT SELLERS**

19 **SECTION 201. APPLICATION FOR LICENSE.**

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

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

27 (c) An applicant under this article must apply in writing,
28 under oath, and in the form prescribed by the [superintendent].

29 The application must include the following:

30 (1) the legal name and residential and business
31 addresses of the applicant and any fictitious or trade name used
32 by the applicant in the conduct of its business;
33

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

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

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

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

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

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

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

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

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

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

27 (3) a description of the corporate structure of the

1 applicant, including any parent or subsidiary of the applicant,
2 and whether any parent or subsidiary is publicly traded on a
3 national securities exchange;

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

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

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

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

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

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

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

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

26 _____ (2) the legal and any fictitious name, business and
27 residential addresses, personal financial statements, and

1 employment for the past [five] years, for each controlling person
2 that is an individual and each responsible individual of the
3 applicant;

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

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

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

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

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

17 **Reporter's Notes: Selected Issue:** At the February 1998 Drafting
18 Committee meeting, the Drafting Committee decided to create
19 separate licensing, net worth and bonding requirements for both
20 categories of money services (as a separate group). At the
21 February Drafting Committee meeting, the Drafting Committee
22 decided to create separate licensing, net worth and bonding
23 requirements for both categories of money service businesses. It
24 was felt that check cashers and currency exchangers posed less
25 safety and soundness concerns because customers were provided
26 with cash immediately. Additionally, ~~observers~~ **Observers** stated
27 that check cashers are typically subject to minimal ~~or no~~ net
28 worth ~~requirements in states where they are regulated.~~
29 **requirements.**

30
31 As set forth in ~~Parts~~ **Articles** 2 and 3, separate licensing,
32 recordkeeping and net worth requirements have been established
33 for money transmitters and for check cashers/foreign currency
34 exchanges. The ~~superintendent's~~ **superintendent's** supervisory and
35 enforcement powers, however, are the same for all money services
36 businesses. This is the approach taken by several states
37 including Florida and Georgia. This is to promote ~~the other main~~
38 **goal one of the main goals** of the ~~Draft NDP~~ **Proposed** Act which is
39 to create an appropriate regulatory framework to deter and
40 eliminate the use of money services **s** businesses as potential

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

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

34
35
36 ~~SECTION 302. BOND AND NET WORTH REQUIREMENTS.~~ SECTION 202.
37 SECURITY.

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

39 ~~(a) Each~~ (a) An application ~~for a license,~~ under this
40 ~~part~~article, must be accompanied by a surety bond, irrevocable
41 letter of credit, or other similar security~~device~~ acceptable to
42 the [superintendent] in the amount of [\$50,000].

43 ~~(b) If the~~ (b) If an applicant proposes to engage in the
44 business~~under this [Act]~~ at more than one location, through

1 authorized delegates or otherwise, the amount of the
2 security ~~device~~ is increased by [\$10,000] per location, ~~up not to~~
3 ~~exceed to a maximum of~~ [\$250,000]. The security ~~device shall~~ must
4 be in a form satisfactory to the [superintendent] and shall run
5 to the State for the benefit of any claimant~~s~~ against the
6 licensee to secure the faithful performance of the obligations of
7 the licensee with respect to the receipt, handling, transmission,
8 and payment of money in connection with the ~~sale and~~
9 ~~issuance~~ sale, issuance, and provision of payment instruments and
10 the transmission of money.

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

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

17 (b) Each application under this article shall be accompanied
18 by, and each licensee shall maintain at all times, a bond
19 executed by the licensee as principal and a surety company
20 authorized to do business in this ~~(b) State as surety.~~ The bond
21 shall be in the amount of [\$25,000] for a licensee with five or
22 fewer authorized delegates and locations; [\$100,000] for a
23 licensee with more than five but fewer than [21] authorized
24 delegates and locations; and an additional [\$5,000] for each
25 authorized delegate and location in excess of [20] but fewer than
26 [200] authorized delegates and locations, to a maximum of
27 [\$250,000] and an additional [\$5,000] for each authorized

delegate and location in excess of ~~200~~[200] authorized delegates and locations, to a maximum of [\$500,000].

Source: ~~Model Money Transmitter Licensing and Regulation Act Section 8.~~Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12 Transmitters of Money; A.R.S. Section 6-1205.

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

~~—(c) In the case of a bond, the~~ (c) The aggregate liability ~~of the surety shall on a surety bond may~~ not exceed the principal sum of the bond. ~~Claimants against the licensee or the authorized delegates may bring suit directly on the security device~~ A claimant against a licensee may commence and maintain an action directly on the bond or the [superintendent] may ~~bring suit on behalf of the claimants. The bond is conditioned on the compliance of the licensee, including its directors, officers, authorized delegate, and employees, with this [Act].~~ commence The ~~bond shall be payable to any~~ and maintain an action on behalf of the claimant. The bond must be payable to a person injured by the wrongful act, omission, default, fraud, or misrepresentation of a licensee or an authorized delegate or employee of default, fraud, or misrepresentation of the licensee, his or her authorized delegates or employees, the licensee in the conduct of its business as a licensee or to the State for the benefit of the [superintendent] and of the person injured. Only one bond is

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

4 ~~(d) In the case of an~~ (d) An irrevocable letter of ~~credit, the~~
5 ~~letter of~~ credit must run to the State, for the benefit of the
6 [superintendent] and for the benefit of ~~all persons~~ any person
7 injured by ~~the omission, default, fraud, or misrepresentation a~~
8 wrongful act, omission, default, fraud, or misrepresentation of a
9 by a licensee or an authorized delegate or employee of the
10 licensee in the conduct of its ~~activity~~ business as a licensee.

11 Draws upon an irrevocable letter of credit must be available by
12 sight drafts in amounts determined by the [superintendent] up to
13 the aggregate amount of the irrevocable letter of credit.

14 ~~(e) The~~ (e) A security ~~device shall~~ must remain in effect until
15 cancellation, which may occur only after [30] days' written
16 notice to the ~~[superintendent]~~. ~~Cancellation shall not affect~~
17 ~~any liability incurred during this~~ [superintendent] of the
18 intended cancellation.

19 period.

20 ~~(f) The security device shall remain in place for no longer than~~
21 ~~{5}~~ (f) A security must remain effective for as long as the
22 [superintendent] specifies but no less than [five] years after
23 the licensee ceases ~~money service operations~~ its money services
24 business in this State. However, the [superintendent] may permit
25 the security ~~device~~ to be reduced or eliminated before that time
26 to the extent that the amount of the ~~licensee's~~ licensee's payment
27 instruments outstanding in this State ~~are~~ is reduced. The

1 ~~superintendent~~ [superintendent] may permit a licensee to
2 substitute ~~a letter of credit or other~~ another form of
3 security ~~device~~ acceptable to the [superintendent] for the
4 security ~~device in place~~ effective at the time the licensee ceases
5 ~~money service business activities~~ to be a money services business
6 in this State.

7 **Source:** ~~Model Act Regulating Money Transmitters~~ President's
8 Commission Act Section 8; Delaware Code, Chapter 27, Section
9 2714.

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

13
14 _____ (g) In lieu of the security ~~device~~ prescribed in this section,
15 an applicant ~~for a license~~ or a licensee may deposit with the
16 [superintendent] cash, or alternatives to cash acceptable to the
17 [superintendent], in the amount of the required ~~security device.~~
18 security. The principal amount of the deposit may be released to
19 the applicant ~~for a license~~ or licensee only upon written
20 authorization of the [superintendent] or on the order of a court
21 of competent jurisdiction.

22 **Source:** Arizona Money Transmitter Act Section 6-1205; ~~Model Money~~
23 ~~Transmitter Licensing and Regulation~~ President's Commission Act
24 Section 8.

25 **Reporter's Note:** Bonding or net worth requirements are safety and
26 soundness measures designed to protect the public but also to
27 deter companies that have questionable solvency or business
28 practices from entering the market. The bond requirement serves a
29 barrier to entry for unstable companies. Alternatives, however,
30 are provided to the bond requirement in the form of cash or cash
31 alternatives. Licensees may also be permitted to deposit
32 specified liquid assets in the amount of the bond. The Drafting
33 Committee will need to strike a balance between the goals of
34 safety and soundness and also providing open access to businesses
35 ~~who~~ wish to enter the money services s market.

36
37 Some Observers have queried how claimants may obtain cash in the
38 event of a problem with the licensee meeting its obligations. The
39 Drafting Committee may wish to consider whether additional

1 guidance should be provided concerning security devices.

2
3 ~~SECTION 303.~~ SECTION 203. **ISSUANCE OF LICENSE.**

4 _____ (a) Upon the filing of ~~a complete~~an application under ~~parts~~
5 ~~2 of this [Act]~~this article, the [superintendent] shall
6 investigate the applicant's financial condition and
7 responsibility, financial and business experience, character, and
8 general ~~fitness of the applicant.~~fitness. The [superintendent]
9 may conduct an on-site investigation of the applicant, the
10 reasonable ~~cost,~~cost of which ~~shall~~must be borne by the
11 applicant. The [superintendent] may issue a license under this
12 article to an applicant if the [superintendent] finds that all of
13 the following conditions are met:

14 ~~(1) the appellant~~_____ (1) the applicant has complied with
15 ~~section 301 and 302 of the [Act].~~Sections 201 and 202;
16 ~~(2) the competence and experience~~_____ (2) the competence,
17 experience, character, and general fitness of the officers,
18 directors, and controlling persons, and any proposed management
19 personnel indicate that it is in the interest of the public to
20 permit ~~such persons~~each of them to participate in the
21 ~~activities~~money services business of the licensee; and
22 _____ (3) the applicant has paid the required license ~~fee~~and
23 application fees.

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

1 date on which the application is determined to be complete. ~~In the~~
2 ~~absence of approval or denial of the application within [120]~~
3 ~~days after the date an application is complete or any extended~~
4 ~~period ends, the application is considered approved.~~ If the
5 application is not approved or denied within the period allowed
6 for approval, the application is considered approved, deemed
7 approved and the [superintendent] shall issue the license
8 effective as of the first business day after ~~the [120]~~
9 day expiration of the period.

10 ~~(e) Any~~ (c) An applicant that is denied a license by the
11 [superintendent] under ~~part 2 may request a hearing~~ this article
12 may appeal the denial within [30] days ~~of~~ after receipt of the
13 written notice of the ~~denial.~~
14 denial in a hearing before the [administrative law judge]
15 pursuant to the [state administrative procedure act].

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

18 **Reporter's Reporter's Note:** At the February 1998 Drafting
19 Committee meeting, the Drafting Committee inquired as to whether
20 states had mandatory time frames in which the regulator must
21 respond to license applications. The Money MTRATransmitters'
22 Regulators Association representative supplied the Drafting
23 Committee with sample statutory provisions that included
24 mandatory time frames for response to a license application. In
25 Tennessee, the time period is 180 days rather than 120. The MTRA
26 Model Legislation Outline recommends a 120-day time period. The
27 extension for "good cause" comes from the Maine Act to Regulate
28 Money Transmitters and Amend Consumer Credit Laws, 32 M.R.S.A.
29 Section 6109(2).
30

31 ~~SECTION 303- ALTERNATIVE 1-~~

32 ~~SECTION 303. LICENSE RENEWAL.~~ SECTION 204. RENEWAL OF LICENSE.

33 (a) A licensee under this article must apply for a renewal
34 of its license and pay a renewal fee annually on the anniversary
35 of the issuance of the license or, if that date is not a business

day, on the first business day following that date.

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

~~(b) The renewal fee shall be accompanied by~~ (c) A licensee under this
article shall submit with the renewal fee a report, in a form
prescribed by ~~{the superintendent}, which form shall be sent by the~~
~~[superintendent] to each licensee no later than three months immediately~~
~~preceeding~~the [superintendent]. The [superintendent] shall send a
copy of the form to each licensee under this article ~~[no the date~~
~~established by the [superintendent] later than three months]~~
immediately before the date for license renewal. The ~~licensee must~~
~~include the following in its annual renewal report:~~renewal report must
contain:

~~(1) a copy of its~~ (1) a copy of the licensee's most recent
audited consolidated annual financial ~~statement, or in the case~~
~~of a licensee that is a wholly owned~~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, the dollar~~State that have not been
previously included on a renewal report, the monetary amount of
those instruments, and the ~~dollar~~monetary amount of those
instruments currently ~~outstanding for the most recent quarter for~~
outstanding;

~~which data is available before the date of filing of the renewal~~
~~application, but in no event more than [120] days before the~~

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

9
10 ~~(3) any material changes to any~~ (3) a description of each
11 material change to information submitted by the licensee on its
12 original license application which ~~have~~has not been
13 previously~~been~~ reported to the [superintendent] on any~~other~~
14 ~~report~~ required ~~to be filed~~ report;

15 ~~under this [Act];~~

16 ~~_____ (4) a list of the licensee's permissible investments,~~
17 ~~if applicable, investments; and~~

18 ~~_____ (5) a list of the locations within this State at~~
19 ~~which business regulated by this [Act] is being conducted by~~
20 ~~either the licensee or its authorized delegate. an authorized~~
21 ~~delegate engage in the business.~~

22 ~~(c) A licensee~~ (d) The [superintendent] shall notify in writing a
23 licensee under this article that has not filed a renewal report
24 or paid its renewal fee by the renewal ~~filing deadline~~date and
25 has not been granted an extension of time to do so by the

26 [superintendent] ~~shall be notified in writing that its license has~~
27 been suspended. The licensee has [30] days after the date of
28 receipt of the notice of suspension to file a renewal report and
29 to pay the renewal fee plus [\$100] for each day by the
30 ~~[superintendent] that a hearing is scheduled at which time the~~
31 ~~licensee will be required to show cause why its license should~~

~~not be suspended pending compliance with these requirements. 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~~ **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 ~~approach.~~
~~approach. The current renewal provisions in subparagraph c have~~
~~been modified. Both the Drafting Committee and Observers noted~~
~~that it was too cumbersome~~

~~—SECTION 305. LICENSE FEE.~~

~~to have a hearing provision for failure to renew a license. The~~
~~Drafting Committee decided that a preferable alternative was for~~
~~the license to expire if not renewed in a timely fashion. The~~
~~licensee, however, shall have 30 days to cure its failure to~~
~~renew its license. Additionally, some Observers noted that~~
~~Section 306(2) (Alternative 2) which was contained in the~~
~~February 1998 draft was a useful provision. This Section included~~
~~a penalty of \$100 per day for late filing of a renewal~~
~~application. Current Section 203 has been modified to include~~
~~such a penalty.~~

~~(a) Each application for a license must be accompanied by an~~

~~SECTION 205. APPLICATION LICENSE AND FEES. A non-refundable~~
~~application fee of [\$1,000] and a license fee of ~~[\$3,000].~~~~
~~[\$3,000] must accompany an application for a license under this~~
~~article. The license fee must be refunded if the application is~~
~~denied. No application fee is denied.~~

~~refunded.~~

~~Source:~~ Model Money Transmitter Licensing and Regulation Action
Section 8. ~~Source:~~ President's Commission Act Section 8.

~~Reporter's~~ **Reporter's Note:** The Drafting Committee decided to omit any references to license fees being placed in a separate fund

1 for the exclusive use of the Superintendent for the
2 administration and enforcement of the [Act].

3
4 ~~SECTION 306.~~ SECTION 206. NET WORTH. A licensee ~~must under~~
5 this article shall maintain a net worth ~~that in liquid assets~~ of
6 at least [\$100,000] plus [\$10,000] for each location at which the
7 licensee or an authorized delegate ~~to a maximum of [\$500,000].~~
8 engages in the business, not to exceed [\$500,000].

9 **Source:** ~~Model Money Transmitter Licensing and~~
10 ~~Regulation~~ President's Commission Act Section 8.

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

19
20 PART 4. ARTICLE 3

21 LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS.

22 ~~SECTION 401. APPLICATION FOR LICENSE.~~ Reporter's Note: At the
23 October 1998 Drafting Committee meeting, it was agreed that
24 licensing under Article 4 (formerly Part 4) of the Act would be
25 limited to those check cashers and currency exchangers who are
26 not authorized delegates of licensees under Article 3 (formerly
27 Part 3) of the Proposed Act. In other words, check cashers who
28 serve as authorized delegates of money transmitters or stored
29 value providers would not have to obtain a separate license for
30 their check cashing activities.

31
32 The Drafting Committee should consider whether the current
33 licensing regime set forth in Article 3 will create any material
34 differences for check cashers who are authorized delegates as
35 opposed to check cashers who are not authorized delegates (and
36 thus required to obtain a license) with respect to the level of
37 recordkeeping and reporting required of both entities.

38
39 As a general matter, the Drafting Committee should consider
40 whether it might be useful to use a different term for licensing
41 under Article 4 that will differentiate between the two different
42 licensing schemes in the Proposed Act. Some Observers have
43 suggested the term "license" for money transmitters and stored
44 value providers and the term "registration" for check cashers and
45 currency exchangers.

1 SECTION 301. APPLICATION FOR LICENSE.

2 ~~(a) No person shall engage in or in any manner advertise the~~
3 ~~business of cashing payment instruments or the exchanging of~~
4 ~~currency.~~ (a) A person that is not an authorized delegate of a
5 licensee under Article 2 or that is not licensed under Article 2
6 may not engage for consideration in check cashing or currency
7 exchange without first obtaining a license under ~~the provisions~~
8 ~~of this part.~~ this article.

9 ~~(b) A person licensed pursuant to this part may cash payment~~
10 ~~instruments or exchange currency. A person registered~~
11 ~~under this part is prohibited from engaging directly in~~
12 ~~money transmission but that person is not prohibited~~
13 ~~from acting.~~ (b) A person licensed under this article
14 may not engage directly in money transmission, or sell,
15 issue, or provide payment instruments, but the person
16 may act as an authorized delegate ~~with~~of a person
17 licensed under ~~part 2.~~

18 Article 2.

19 ~~Each license application shall be in writing and under oath to~~
20 ~~the [superintendent in such form as the [superintendent] may~~
21 ~~prescribe. The application shall.~~ (c) An applicant for a license
22 under this article must apply in writing, under oath, and in the
23 form prescribed by the [superintendent]. The application must
24 include the following:

25 ~~(1)~~ (1) the legal name and residential and business
26 addresses of the applicant, if the applicant is ~~a natural person,~~
27 ~~or an individual or,~~ if the applicant is ~~a partnership,~~

~~association or corporation, not an individual,~~ the name of
~~everyeach~~ partner, executive ~~officer or officer,~~ and director;
~~(2)~~ (2) the location of ~~he, the~~ principal office of the
applicant;
~~(3)~~ (3) the complete ~~address of any~~ addresses of other
locations in this State at which the applicant proposes to engage
in check cashing or currency exchange including other limited
stations and mobile locations;
~~(4) documents confirming that the net worth set forth in~~
~~section 404 has or will be satisfied; and~~
~~other information as the department may reasonably require with~~
~~respect to the applicant. The [superintendent], however may not~~
~~require more information than specified in Part 2 of this [Act].~~
(4) a document confirming that the requirement for net worth
as set forth in Section 305 has been or will be satisfied;
(5) a description of the source of funds to be used for
check cashing and currency exchange; and
(6) other information the [superintendent] reasonably
requires with respect to the applicant, but not more than the
[superintendent] may require under Article 2.

Source: Florida Money Transmitters' Code Sections 560.304 and 305.
Reporter's Reporter's Note: At the February ~~Drafting~~ 1998 drafting
meeting, ~~observers~~ 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 ~~s~~
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

1 a unified licensing system as contained in the February 1998
2 draft. Currency exchanger~~s~~ have also been included in this
3 ~~section.~~Section. As stated previously, Florida and Maine are
4 examples of states that have grouped check cashers and currency
5 exchangers together for purposes of licensing requirements.

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

17
18 ~~SECTION 402.~~ SECTION 302. ISSUANCE OF LICENSE.

19
20 ~~—~~ (a) Upon the filing of ~~a complete~~an application under ~~part 3~~
21 ~~of this [Act]~~this article, the [superintendent] shall investigate
22 the applicant's financial condition and responsibility, financial
23 and business experience, character, and general ~~fitness of the~~
24 ~~applicant.~~fitness. The [superintendent] may conduct an on-site
25 investigation of the applicant, the reasonable cost of which
26 ~~shall~~must be borne by the applicant. The [superintendent] may
27 issue a license under this article to an applicant if the
28 [superintendent] finds that all of the following conditions are
29 met:

30 ~~(1) the appellant~~ (1) the applicant has complied with
31 ~~section 401 and 405 of the [Act].~~Section 301;
32 ~~(2) the competence and experience~~ (2) the competence,
33 experience, character, and general fitness of the officers,
34 directors, and controlling persons, and any proposed management
35 personnel indicate that it is in the interest of the public to
36 permit ~~that person~~each of them to participate in the

~~activities~~ money services business of the licensee; and

_____ (3) the applicant has paid the required
license ~~fee.~~

~~—~~ and application fees.

_____ (b) The [superintendent] shall approve or deny an
application for an original license within [120] days after ~~the~~
~~date~~ an application is filed and is complete. The ~~superintendent~~
~~may extend this period upon a showing of [superintendent] may~~
extend the period for good cause. The [superintendent] shall

notify the applicant of the date on which the application is
determined to be complete. ~~In the absence of approval or denial of~~
~~the application within [120] days after the date an application is~~
~~complete or any extended period ends, the application is~~
~~considered approved.~~ If the application is not approved or denied
within the period allowed for approval, the application is
~~considered approved, deemed approved and~~ the [superintendent]
shall issue the license effective as of the first business day
after ~~the [120] day~~ expiration of the period.

~~(e) Any~~ (c) An applicant that is denied a license by the
[superintendent] under ~~part 3 may request a hearing~~ this article
may appeal the denial within [30] days ~~of~~ after receipt of the
written notice ~~if the denial.~~
of the denial in a hearing before the [administrative law judge]
pursuant to the [state administrative procedures act].

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

Reporter's Reporter's Note: At the February 1998 Drafting
Committee meeting, the Drafting Committee inquired as to whether
states had mandatory time frames in which the regulator must

1 respond to license applications. The MTRA representative supplied
2 the Drafting Committee with sample statutory ~~provisions,~~
3 ~~which provisions that~~ included mandatory time frames for response
4 to a license application. In Tennessee, the time period is 180
5 days rather than 120. The MTRA Model Legislation Outline
6 recommends an 120-day time period. The extension for "good cause"
7 comes from the Maine Act to Regulate Money Transmitters and Amend
8 Consumer Credit Laws, 32 M.R.S.A. Section 6109(2).

9
10 ~~SECTION 403. LICENSE RENEWAL.~~ SECTION 303. RENEWAL OF
11 LICENSE.

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

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

19 ~~(b) The renewal fee shall be accompanied by~~ (c) A licensee shall pay
20 an annual fee for the renewal of a license. The licensee shall
21 submit with the renewal fee a report, in a form prescribed by
22 ~~[the superintendent], which form shall be sent by the [superintendent] to each~~
23 ~~licensee no later than three months immediately proceeding the~~
24 [superintendent]. The [superintendent] shall send a copy of the
25 date established by the [superintendent] form to each licensee under
26 this article no later than [three months] immediately before the
27 date for license renewal. The ~~licensee must include the following in its~~
28 ~~annual renewal report.~~ renewal report must contain:

29 ~~(1) any material changes to any~~ (1) a description of each
30 material change to information submitted by the licensee on its
31 original license application which ~~have~~ has not been
32 previously ~~been~~ reported to the [superintendent] on any ~~other~~

1 ~~report required to be filed report; and~~

2 ~~under this [Act];~~

3 ~~(2) a list of the licensee's permissible investments,~~
4 ~~if applicable; and~~

5 ~~(3)~~ (2) a list of the locations ~~with~~in this State at which
6 either the licensee or ~~its~~an authorized delegate ~~is conducting~~
7 ~~business regulated by this [Act]. of the licensee engage in the~~
8 ~~business.~~

9 ~~(c) A licensee~~ (d) The [superintendent] shall notify in writing a
10 ~~licensee under this article~~ that has not filed a renewal report
11 or paid its renewal fee by the renewal ~~filing deadline~~date and
12 has not been granted an extension of time to do so by the

13 [superintendent] ~~shall be notified in writing that its license has~~
14 ~~been suspended. The licensee has [30] days after the date of~~
15 ~~receipt of the notice of suspension to file a renewal report and~~
16 ~~to pay the renewal fee plus [\$100] for each day by the~~
17 ~~[superintendent] that a hearing is scheduled at which time the~~
18 ~~licensee will be required to show cause why its license should~~
19 ~~not be suspended pending compliance with these requirements, the~~
20 ~~renewal form and application are not received by the~~
21 ~~[superintendent]. If the licensee does not so file and pay within~~
22 ~~[30] days after the date of receipt of the notice of suspension,~~
23 ~~the license is permanently revoked.~~

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

26 **Reporter's Note:** ~~The license renewal provisions are slightly~~
27 ~~different for check cashers and currency exchangers (as opposed~~
28 ~~to Part 2 licensees). The requirement of audited consolidated~~
29 ~~financial statements and also information concerning payment~~
30 ~~instruments sold has been omitted. It is anticipated, however,~~

1 ~~that the appropriate state regulator would prescribe what type of~~
2 ~~information should be contained in a renewal report.~~

3
4 ~~—SECTION 404. LICENSE FEE.~~Reporter's Note: The alternative to a
5 provision which outlines the contents of an annual renewal report
6 is for the regulator to prescribe the contents of a renewal
7 application by regulation. The Model Money Transmitters Licensing
8 and Regulation Act contains a provision which takes this
9 approach. The current renewal provisions in subparagraph c have
10 been modified. Both the Drafting Committee and Observers noted
11 that it was too cumbersome to have a hearing provision for
12 failure to renew a license. The Drafting Committee decided that a
13 preferable alternative was for the license to expire if not
14 renewed in a timely fashion. The licensee, however, shall have 30
15 days to cure its failure to renew its license. Additionally, some
16 Observers noted that Section 306(2) (alternative 2) which was
17 contained in the February 1998 draft was a useful provision. This
18 Section included a penalty of \$100 per day for late filing of a
19 renewal application. Current Section 302 has been modified to
20 include such a penalty.

21
22 ~~(a) Each application for a license must be accompanied by an~~ SECTION
23 304. APPLICATION AND LICENSE FEE. A non-refundable application
24 fee of [\$1,000] and a license fee of ~~[\$3,000].~~ [\$3,000] must
25 accompany an application for a license under this article. The
26 license fee must be refunded if the application is ~~denied.~~ No
27 application fee is denied.

28 refunded.

29 ~~Source: Model Money Transmitter Licensing and Regulation Act~~
30 ~~Section 8.~~ Source: President's Commission Act Section 8.
31 ~~Reporter's~~Reporter's Note: The Drafting Committee decided to omit
32 any references to license fees being placed in a separate fund
33 for the exclusive use of the Superintendent for the
34 administration and enforcement of the [Act].

35
36 ~~SECTION 405.~~ SECTION 305. NET WORTH. A licensee ~~must~~under this
37 article shall maintain a net worth in liquid assets of at least
38 [\$10,000] ~~in liquid assets~~ for each location at which the licensee
39 or an authorized delegate of the licensee engages in check
40 cashing or currency exchange ~~or check cashing takes place~~ and at least
41 [\$2,500] for each ~~limited~~ mobile location or limited facility.

~~facility location specified in the application~~

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

~~Reporter's Note: As observers~~**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 ~~whereas~~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).

~~PART 5.~~

~~AUTHORIZED DELEGATES. ARTICLE 4~~

AUTHORIZED DELEGATES

~~SECTION 501.~~ SECTION 401. RELATIONSHIP BETWEEN LICENSEES AND AUTHORIZED DELEGATES.

~~(a) Each~~ (a) A contract between a licensee and an authorized delegate ~~shall~~must require the authorized delegate to operate in full compliance with ~~the law and shall contain an appendix copy of~~ this [Act]. The licensee shall provide each authorized delegate with written policies and procedures sufficient to permit compliance with this ~~[Act] and rules adopted under this [Act]. The licensee shall promptly update its policies and procedures to~~ [Act].

~~permit compliance with those laws and rules.~~

_____ (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 se names are on record with the [superintendent] of the [superintendent's] action. On receipt of ~~this~~the notice, an authorized delegate

1 shall immediately cease to ~~operate~~engage in the business as a
2 delegate of the licensee.

3 **Source:** ~~Model Money Transmitter Licensing and Regulation Act Section 10.~~
4 ~~President's Commission Act Section 10.~~

5 ~~**Reporter's Note:** Section 501 (formerly Section 401 in the~~
6 ~~February Draft) contains substantial revisions, the~~**Reporter's**
7 **Note:** Section 401 (formerly Section 501 in the February 1998
8 draft) contains substantial revisions. The following provisions
9 were omitted:

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

20
21 ~~SECTION 502.—~~ SECTION 402. SCOPE OF AUTHORIZED~~DELEGATE~~
22 ~~ACTIVITY.~~

23 ~~(a)~~DELEGATE'S ACTIVITY. An authorized delegate may not ~~conduct~~
24 ~~business for which a license is required under this [Act]~~
25 ~~and~~knowingly engage in activity which is outside the scope of
26 activity ~~conferred in~~impermissible under the contract between the
27 authorized delegate and the ~~licensee.~~licensee, except as
28 provided in Section 105(d). An authorized delegate of a licensee
29 holds in trust for the benefit of the licensee all moneys net of
30 fees received from the ~~sale and delivery~~sale, delivery, or
31 provision of the licensee's payment instruments or ~~moneys~~
32 ~~received for transmission.~~money received for transmission.

33 ~~(b) An authorized delegate consents to the~~
34 ~~[superintendent's] inspection, with or without prior notice to~~
35 ~~the licensee or authorized delegates, of the books and records of~~
36 ~~authorized delegates of the licensee.~~

~~Source: Model Money Transmitter Licensing and Regulation Act Section 10.~~

~~Reporter's Note: Subsection (b) omits the requirement included in the previous draft that the Superintendent have a "reasonable basis" to believe that the delegate has violated the Act before inspecting its books and records.~~

~~SECTION 503. PROHIBITED TRANSACTIONS. SECTION 403. UNAUTHORIZED ACTIVITIES.~~ A person may not engage in conduct requiring a license under this [Act] as an authorized delegate of a principal if the principal person that is not licensed under this [Act]. A person that engages in that conduct is engaging in the business who does so shall be considered to be the principal seller, issuer, or actor rather than an authorized delegate and is liable to the holder, remitter, or customer to the same extent as if the person were the principal.

~~Source: Arizona Money Transmitter Act Section, Model Money Transmitter Licensing and Regulation 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 sectionSection 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.~~

~~PART 6. ARTICLE 5.~~

~~EXAMINATIONS, REPORTS AND RECORDS. REPORTS, AND RECORDS~~

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

~~(a) The [superintendent] may conduct an annual on-site examination of a licensee or any of its authorized delegates upon [45] days' written notice to the licensee. However, if If the [superintendent] has reason to believe that a licensee or authorized delegate is engaging in an unsafe or unsound practice, pr has violated or is violating a provision of the [Act], the [superintendent]~~

1 may examine the licensee or its authorized delegate without
2 ~~providing advance notice.~~ having given notice.

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

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

13 ~~Reporter's~~ **Reporter's Note:** The previous subsection (b) has been
14 merged into subsection (a) with respect to the examination of
15 authorized ~~delegates.~~

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

31
32 ~~SECTION 602.~~ SECTION 502. **JOINT EXAMINATIONS.**

33 ~~(a) On-site examinations of records prescribed in this [Act].~~ (a) An on-
34 site examination of books, records, accounts, and documents
35 listed in Section 505 may be conducted in conjunction with
36 representatives of other ~~state~~ State agencies or agencies of
37 another state or of the federal government as determined by the

[superintendent]. In lieu of an ~~on-site~~ examination, the [superintendent] may accept the examination report of an agency of this State or of another ~~State~~ or of the federal government or a report prepared by an independent licensed ~~or~~ certified public accountant. ~~Joint~~ A joint examination or an acceptance of an examination report ~~shall is~~ not ~~be considered~~ a waiver of the [superintendent's] authority to conduct an examination ~~assessment~~ provided by law. ~~Joint reports and reports~~ A joint report or a report accepted under this subsection ~~are~~ considered is an official reports of the [superintendent] for all purposes.

____ (b) Information obtained during ~~examinations~~ an examination under this [Act] ~~shall~~ may be disclosed only as provided in Section ~~608.509.~~

Source: Model Act Regulating Money Transmitters Section 14.

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

~~SECTION 603.~~

SECTION 503. REPORTS.

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

1 ____ (b) A licensee shall file with the [superintendent] within
2 ~~{15} days~~ [one] day after its occurrence a report of any of the
3 following events:

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

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

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

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

15 ~~(3) a felony indictment~~ (5) a felony [indictment], prosecution,

16 or conviction of the licensee or of an officer, director,
17 controlling person, ~~branch manger,~~ responsible individual, or
18 authorized delegate of the licensee related to activities licensed
19 ~~activity~~ regulated under this [Act] or involving ~~conduct defined as~~
20 money laundering or ~~specified unlawful activity.~~ unlawful activity
21 specified by the [superintendent] by rule.

22 ~~(c) A licensee who fails to file any~~ (c) A licensee that does

23 not file a report required by this section ~~before~~ by the time
24 designated for filing the ~~report, or fails to include any~~ report
25 or does not include prescribed information in the report, ~~shall~~
26 pay a penalty of [\$100] for each day that the report is ~~delayed~~
27 ~~or not so filed or is~~ incomplete, unless the [superintendent], for

1 good cause ~~shown~~, reduces the amount to be paid, ~~or unless the~~
2 ~~time to file the report was extended in writing by the~~
3 ~~{superintendent}~~.

4 **Source:** ~~Model Money Transmitter Licensing and~~
5 ~~Regulation~~ President's Commission Act Section 13.

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

18
19 ~~SECTION 604.~~ SECTION 504. CHANGE OF CONTROL.

20 ~~{a} Any person or group of persons who proposes to purchase or~~
21 ~~acquire a controlling interest in a money service business shall~~
22 ~~provide written notice to the {superintendent}.~~

23 ~~{1} A licensee whose stock is traded on an organized~~
24 ~~stock exchange shall provide the {superintendent} with written~~
25 ~~notice within {15} days after knowledge of a change in control.~~

26 ~~{2} A licensee whose stock is not publicly traded shall~~
27 ~~provide the {superintendent} with written notice not less than~~
28 ~~{30} days before the date of the proposed change of control.~~

29 ~~{b} After review of the written notice, the {superintendent}~~

30 ~~may require the licensee to provide additional~~

31 ~~information concerning the proposed new owners or key~~

32 ~~shareholders of the licensee. This information shall~~

33 ~~be of the same type required by the licensee as part of~~

34 ~~its original license application or renewal~~

1 ~~application.~~

2 ~~{c)The [superintendent] may deny the person or group of~~
3 ~~persons who have acquired or who propose to acquire~~
4 ~~control of the licensee, if after investigation, the~~
5 ~~[superintendent] determines that the person or group of~~
6 ~~persons does not have the competence, experience or~~
7 ~~integrity or financial capability to control or operate~~
8 ~~the licensee in a legal and proper manner and that the~~
9 ~~interests of the public may be jeopardized by the~~
10 ~~change in ownership.~~

11 ~~-(d) This section does not apply to any of the following~~
12 ~~persons or transactions:~~

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

16 ~~{2) a person who acts as a proxy for the sole purpose~~
17 ~~of voting at a designated meeting of the security holders of a~~
18 ~~licensee or controlling persons of a licensee;~~

19 ~~{3) a person who acquires control of a licensee or~~
20 ~~controlling person of a licensee by devise or descent;~~

21 ~~{4) a person who acquires control of a licensee or~~
22 ~~controlling person as a personal representative, custodial,~~
23 ~~guardian, conservator, trustee, or any other officer appointed by~~
24 ~~a court of competent jurisdiction or by operation of law;~~

25 ~~{5) a pledge of a voting security of a licensee or~~
26 ~~controlling person who does not have the right, as pledge to vote~~
27 ~~that security; or~~

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

3 ~~(c) Before filing an application for approval to acquire~~
4 ~~control, a person may request in writing a determination from the~~
5 ~~[superintendent] as to whether that person will be considered in~~
6 ~~control upon consummation of a proposed transaction. If the~~
7 ~~[superintendent] determines that the person will not be a~~
8 ~~controlling person within the meaning of this section, the~~
9 ~~[superintendent] shall enter an order to that effect and the~~
10 ~~proposed transaction is not subject to the requirements of this~~
11 ~~section.~~

12 **~~Source:~~** ~~Florida Money Transmitters Code Section 560.127 (with~~
13 ~~modifications).~~

14 **~~Reporter's Note:~~** ~~In February, the Drafting Committee objected to~~
15 ~~the previous section dealing with change in control. The~~
16 ~~previous provision required prior written approval from the~~
17 ~~superintendent before acquisition of a money service business.~~
18 ~~The current provision requires notice rather than prior approval~~
19 ~~in all instances.~~

20
21 ~~SECTION 605 ALTERNATIVE 1~~

22 ~~—SECTION 605. BOOKS AND RECORDS.~~

23 ~~—(a) Each licensee shall maintain books, accounts, records and~~
24 ~~documents necessary to determine the registrant's compliance with~~
25 ~~the provisions of this [Act]. Books, accounts, records and~~
26 ~~documents shall be retained for a period of at least [3] years.~~

27 ~~(b) The items specified under subsection (a) may be~~
28 ~~maintained in paper, photographic, electronic, or similar format.~~

29 ~~(c) Records may be maintained at a location other than~~
30 ~~within this State so long as they are made accessible to the~~
31 ~~[superintendent] on [7] days written notice.~~

1 ~~Source: Florida money Transmitters Code Section 560.310.~~ (a) A
2 person or group of persons that proposes to acquire control shall
3 give written notice to the [superintendent] and request approval
4 of the acquisition.

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

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

13 (d) After review of the request for approval under
14 subsection (a), the [superintendent] may require the licensee to
15 provide additional information concerning the proposed
16 controlling person or key shareholder of the licensee or
17 controlling person. The additional information must be limited to
18 the same type required of the licensee or controlling person as
19 part of its original license or renewal application.

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

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

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

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

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

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

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

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

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

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

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

10
11 **SECTION 505. BOOKS, RECORDS, ACCOUNTS, AND DOCUMENTS.**

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

- 16 (1) a record of each payment instrument sold;
17 (2) a record of each payment instrument cashed;
18 (3) a general ledger posted at least monthly containing
19 all assets, liability, capital, income, and expense accounts;
20 (4) settlement sheets received from authorized
21 delegates;
22 (5) bank statements and bank reconciliation records;
23 (6) records of outstanding payment instruments;
24 (7) records of each payment instrument paid within the
25 [three]-year period;
26 (8) a list of the names and addresses of all of the
27 licensee's authorized delegates; and
28 (9) any other books, records, accounts, and documents
29 that may be prescribed by the [superintendent] by rule.

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

32 (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.

~~**Reporter's Note:** Most~~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.

~~SECTION 605 ALTERNATIVE 2.~~

~~**SECTION 605. BOOKS AND RECORDS.**~~

~~(a) A licensee shall maintain the following books, accounts, and records for a period of [three] years as applicable:~~

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

~~(2) a record of each payment instrument cashed;~~
~~(3) a general ledger posted at least monthly containing~~
~~all assets, liability, capital, income, and expense accounts;~~
~~(4) settlement sheets received from authorized~~
~~delegates;~~
~~(5) bank statements and bank reconciliation records;~~
~~(6) records of outstanding payment instruments;~~
~~(7) records of each payment instrument paid within the~~
~~{three} year period;~~
~~(8) a list of the names and addresses of all of the~~
~~licensee's authorized delegates.~~

~~(b) The items specified under paragraph (a) may be~~
~~maintained in paper, photographic, electronic, or similar format.~~

~~(c) Records may be maintained at a location other than~~
~~within this State so long as they are made accessible to the~~
~~{superintendent} on {7} days written notice.~~

~~**Source:** Model Act Regulating money Transmitters, Section 15 (with~~
~~modifications).~~

~~**Reporter's Note:** Several states have recordkeeping provisions~~
~~that require licensees to maintain more detailed records.~~
~~Alternative 2 is an attempt to prescribe more detailed records.~~
~~The provision, however, is most applicable or relevant to money~~
~~transmitters and check sellers and issuers.~~

~~**SECTION 606. TRANSACTION RECORDS.**~~
~~**Selected Issue:** For how long~~
~~should a licensee have to retain its books and records? At~~
~~present, Section 605 suggests a period of three. Some Observers~~
~~who represent regulatory and law enforcement participants have~~
~~suggested that the retention period should be no shorter than the~~
~~relevant criminal statute of limitations. Additionally, some~~
~~suggestion has been made that in states with racketeering~~
~~statutes, it should be no longer than the criminal or the civil~~
~~racketeering statute of limitations.~~

SECTION 506. RECORDS OF TRANSACTIONS.

(a) A payment instrument sold by a licensee directly, or

1 indirectly through an authorized delegate, must bear the name of
2 the licensee and a unique consecutive number clearly stamped or
3 imprinted on the ~~payment~~ instrument.

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

23 **Source:** ~~Model Money Transmitter Licensing and~~
24 ~~Regulation~~President's Commission Act Section 15.

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

~~SECTION 607.~~ SECTION 507. MONEY LAUNDERING REPORTS.

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

~~(b) The licensee shall file appropriate reports with the [appropriate state agency]~~

~~(c) The timely filing of reports required by 31 U.S.C. Section [] with the appropriate federal agency is considered compliance with this section unless the reports are not regularly and comprehensively transmitted by the federal agency to the [appropriate state agency].~~

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

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

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

Reporter's Note: Observers at the October 1998 Drafting Committee meeting suggested this language. This Section permits licensees to comply with State reporting requirements by filing the appropriate federal anti-money laundering reports. For most jurisdictions, federal data and reports are available through FinCEN's Gateway computer system. According to information the

1 Drafting Committee received from the National Association of
2 Attorneys General, seven states receive such data on a computer
3 tape from FinCEN under a memorandum of understanding.

4
5 Another Observer has suggested that the Proposed Act should
6 encapsulate all of the provisions of the Model Financial
7 Transaction Reporting Act, a complementary statute to the
8 President's Commission Model Law on Money Transmitters. A copy of
9 this model act has been included as an appendix to the Third
10 Draft cover memo for the Drafting Committee's reference. As an
11 alternative, the Observer has also suggested that Section 507 be
12 deleted entirely with reference made to the Model Financial
13 Transaction Reporting Act (with changes to reflect the federal
14 forms required and the data available to State and local
15 authorities through shared databases).

16
17 Some of the suggested weaknesses with the current provision are
18 that no specific violation is created for non-compliance and that
19 there is no violation for licensees or authorized delegates who
20 either evade currency/transaction reporting requirements or who
21 structure transactions so as to avoid reporting requirements. The
22 Drafting Committee needs to consider whether structuring and
23 evasion of reporting requirements should be specific violations
24 under the Proposed Act and whether such violations will have
25 civil and/or criminal liabilities attached to them.

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

30 Discussion: Approximately ~~10~~ten states require that ~~money-service~~
31 ~~businesses~~a money services business comply with all federal and
32 state money laundering and currency transaction reporting laws.
33 State laws typically replicate the federal law and require that
34 cash transactions in excess of \$10,000 be reported to a state
35 authority as well as to the U.S. Treasury. Most of the state
36 reporting legislation does not specifically address money
37 services businesses (but may apply to money services businesses
38 by implication). Several states including Colorado, Connecticut,
39 Idaho, Indiana and Oklahoma require financial institutions to
40 file suspicious activity reports concurrently with ~~federal and~~
41 ~~state~~Federal and State authorities. Arizona has its own
42 suspicious activity form for financial institutions. Suspected
43 money laundering activities are reported to Arizona's Attorney
44 General on a one-page form. Georgia states that each financial
45 institution shall keep a record of currency transactions in
46 excess of \$10,000 and that those reports shall be filed with this
47 State within 15 days of the transaction. The Georgia Department
48 of Banking and Finance, however "may promulgate regulations that
49 permit currency transaction reports filed by financial
50 institutions with federal agencies pursuant to requirements of
51 federal law to satisfy the currency transaction filing
52 requirements . . . provided that the department . . . will have
53 access to the currency transaction reports filed with the federal

1 agencies." Georgia Financial Institutions Code Section 7-1-912.

2
3 ~~—Query:Selected Issue:~~ Should the ~~Draft NDP~~proposed Act also
4 include specific prohibitions against evading currency-reporting
5 requirements (under either ~~federal or state~~Federal or State law)
6 and also against the structuring of transactions? (i.e., the
7 division of a transaction that would trigger currency reporting
8 or Bank Secrecy Act reporting requirements into two or more
9 transactions that are not reportable). Some states explicitly
10 prohibit such actions as part of their criminal code or as part
11 of their ~~money~~money transmission regulations.
12 regulations.

13 Georgia, for example, prohibits the evasion of reporting
14 requirements and also structuring.

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

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

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

29
30 **SECTION 508. ELECTRONIC FILING OF RECORDS.** The

31 [superintendent], by rule, may order that an application, report,
32 or record that is required to be filed pursuant to [this Act] be
33 filed electronically.

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

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

44
45 ~~**SECTION 608.**~~ **SECTION 509. CONFIDENTIALITY OF RECORDS.**

46 _____ (a) Except as otherwise provided in this [Act], the records
47 of the [superintendent] relating to licensees and authorized

1 ~~delegates~~ are not public ~~documents~~records and are not open to
2 inspection by the public. Neither the [superintendent] nor~~any~~
3 ~~member of the [superintendent]'s staff~~an employee of the
4 [superintendent] may disclose information obtained in the
5 discharge of~~his or her~~ official duties to a person not ~~connected~~
6 ~~with the [name of appropriate state department or regulatory~~
7 ~~agency].—employed by the [superintendent].~~

8 _____ (b) The [superintendent] may disclose confidential
9 information pertaining to ~~the~~a licensee or authorized delegate to
10 the following persons:

11 ~~(1) representatives of federal agencies~~_____ (1) a representative
12 of a federal agency insuring accounts of the licensee or
13 authorized delegate;

14 ~~(2) representatives of federal or State agencies and foreign~~
15 ~~countries~~_____ (2) a representative of a federal or state agency
16 of foreign country having regulatory or supervisory authority
17 ~~over~~ the activities of the licensee ~~if those representatives~~
18 ~~are~~or authorized delegate if the representative is permitted to
19 and ~~do~~es, upon request of the [superintendent], disclose similar
20 information respecting ~~those [licensees] under their~~licensees or
21 authorized delegates under its regulation or supervision ~~or to~~
22 ~~those representatives who state~~and who states in writing under
23 oath that ~~the representative they shall~~will maintain the
24 confidentiality of ~~that information.~~the information;

25 _____ (3) the attorney general of this State;

26 _____ (4) to a federal, ~~State or county~~state, or [county]

27 grand jury in response to a lawful subpoena; and

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

_____(c) The [superintendent] may:

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

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

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

_____(d) This section does not ~~prevent~~preclude the disclosure of information that is admissible in evidence in a civil or criminal action, suit, or proceeding brought by or at the request of the [superintendent] ~~of this State~~ to enforce or prosecute ~~violations of this [Act] or the rules or orders issued or promulgated under this [Act].~~

~~Source: Model Money Transmitter Licensing and Regulation Act Section 24.~~

~~PART 7.~~

~~PERMISSIBLE INVESTMENTS.~~

a violation of this [Act] or a rule adopted or an order issued under this [Act].

1 Source: President's Commission Act Section 24.

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

7
8 ARTICLE 6

9 PERMISSIBLE INVESTMENTS

10 ~~SECTION 701.~~ SECTION 601. MAINTENANCE OF PERMISSIBLE
11 INVESTMENTS.

12 ~~(a) A licensee shall maintain at all times permissible~~
13 ~~investments that comply with either of the following:~~

14 ~~(1) a market value computed in accordance with~~
15 ~~generally accepted accounting principles of not less than the~~
16 ~~aggregate amount of all of its outstanding payment instruments,~~
17 ~~if the market value of these permissible investments is at least~~
18 ~~95% of the net carrying value in accordance with generally~~
19 ~~accepted accounting principles; or~~

20 ~~(2) a net carrying value computed in accordance with~~
21 ~~generally accepted accounting principles of not less than the~~
22 ~~aggregate amount of all its outstanding payment instruments.~~

23 ~~(b) Notwithstanding any other provision of this [Act],~~
24 ~~the [superintendent], with respect to any particular licensees,~~
25 ~~may limit the extent to which any class of permissible~~
26 ~~investments, may be considered a permissible investment, except~~
27 ~~for money and certificates of deposit. The [superintendent] may~~
28 ~~by rule prescribe or by order allow other types of investments~~
29 ~~which the [superintendent] determines to have substantially~~
30 ~~equivalent safety as other permissible investments.~~

1 ~~Source: Model Money Transmitter Licensing and Regulation Act~~
2 ~~Section 14.~~

3
4 ~~PART 8.~~

5 ~~ENFORCEMENT.~~

6 ~~SECTION 8001. CEASE AND DESIST ORDERS, SUSPENSION AND~~
7 ~~REVOCATION POWERS.~~

8 ~~(a) After notice and a hearing, the [superintendent] may~~
9 ~~issue a cease and desist order or removal order, deny a license~~
10 ~~application, suspend or revoke a license previously issued under~~
11 ~~this [Act], or order a licensee to revoke the designation of an~~
12 ~~authorized delegate whose conduct has contributed to the~~
13 ~~following:~~

14 ~~(1) the licensee fails to comply with this [Act] or any~~
15 ~~rule or order adopted under this [Act];~~

16 ~~(2) the licensee engages in fraud, misrepresentation,~~
17 ~~deceit, or gross negligence;~~

18 ~~(3) an authorized delegate has violated the Bank Secrecy~~
19 ~~Act or other State or federal anti money~~
20 ~~laundering statutes or has violated any rule~~
21 ~~adopted under this [Act] as a result of the~~
22 ~~licensee's negligent failure to supervise or as a~~
23 ~~result of the willful misconduct of the licensee;~~

24 ~~—(4) the licensee is insolvent or has suspended payment of~~
25 ~~its obligations, has made an assignment for the benefit of~~
26 ~~its creditors, or has admitted in writing its inability to~~
27 ~~pay its debts as they become due;~~

28 ~~(5) the licensee fails to remove an authorized delegate~~
29 ~~after the [appropriate State agency] has issued and served upon~~

1 ~~the licensee a final order setting forth a finding that the~~
2 ~~authorized delegate has violated this [Act].~~

3 ~~(6) the competence, experience, integrity, or overall~~
4 ~~moral character of the licensee or authorized delegate or any~~
5 ~~controlling persons of the licensee or authorized delegate~~
6 ~~indicates that it is not in the public interest to permit that~~
7 ~~person to participate in the money service business; or~~

8 ~~(7) the licensee fails to make any report required by~~
9 ~~this [Act].~~

10
11 ~~**Source:** Florida Money Transmitters Code Section 560.11; Model~~
12 ~~Money Transmitter Licensing and Regulation~~ (a) A licensee shall
13 maintain at all times permissible investments that have a market
14 value computed in accordance with generally accepted accounting
15 principles of not less than the aggregate amount of all of its
16 outstanding payment instruments issued, sold, or provided and
17 funds transmitted by the licensee or its authorized delegates.

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

25 ~~**Source:** President's Commission Act Section 14 (with~~
26 ~~modifications).~~

27 ~~**Reporter's Note:** All references to net carrying value which were~~
28 ~~included in former Section 701 have been omitted. The Drafting~~
29 ~~Committee and Observers both felt that this term was ambiguous.~~
30

(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

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

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

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

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

16
17 **(ALTERNATIVE 2)**

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

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

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

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

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

30 (4) an investment security that is an obligation of the
31 United States or its agencies or instrumentalities or an
32 obligation that is guaranteed fully as to principal and interest

1 by the United States; or an investment in an obligation of a
2 state or governmental subdivision, agency, or instrumentality
3 thereof; and

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

10 (b) The following investments are permissible under Section
11 601, but only to the extent specified:

12 (1) interest-bearing bills, notes, bonds, or debentures
13 of a person the shares of which are traded on a national
14 securities exchange or on a national over-the-counter-market if
15 the aggregate investments under this paragraph do not exceed 20
16 percent of the total permissible investments of a licensee and a
17 licensee does not at one time have investments under this
18 paragraph in any one person aggregating over 10 percent of the
19 licensee's total permissible investments;

20 (2) shares of a person traded on a national securities
21 exchange or a national over-the-counter-market or shares for
22 certificates issued by an open-end management investment company
23 that is registered with the Securities and Exchange Commission
24 under the Investment Company Act of 1940 and the portfolio of
25 which is restricted by the management company's investment policy
26 to shares of a person traded on a national securities exchange or
27 a national over-the-counter-market if the aggregate investment

1 under this paragraph does not exceed 20 percent of the total
2 permitted investments of a licensee and a licensee does not at
3 one time have investments under this paragraph in any one person
4 aggregating over 10 percent of the licensee's total permissible
5 investments;

6 (3) a demand borrowing agreement made to a corporation
7 or a subsidiary of a corporation whose securities are traded on a
8 national securities exchange, if the aggregate of the amount of
9 principal and interest outstanding under demand borrowing
10 agreements under this paragraph does not exceed 20 percent of the
11 total permitted investments of a licensee and a licensee does not
12 at one time have principal and interest outstanding under demand
13 borrowing agreements under this paragraph with any one person
14 aggregating over 10 percent of the licensee's total permitted
15 investments; or

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

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

27 (c) The aggregate investments under subsection (b) may not

1 exceed 50 percent of the total permissible investments of a
2 licensee calculated in accordance with Section 601.

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

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

10
11 At the October 1998 Drafting Committee meeting, Drafting
12 Committee Members expressed some concerns about former
13 Subsections 1-102(a)(26)(e)--(g) which permitted investments --
14 without any limitations or caps on percentage of the licensee's
15 portfolio invested in any of these items -- in any of the
16 following items:

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

29
30 The Drafting Committee felt as did some Observers that these
31 types of investments posed higher levels of risk to the licensee
32 and ultimately to the public than was appropriate for money
33 services businesses. Industry Observers noted, however, that such
34 investments were commonly included in state legislation. In fact,
35 the MTRA outline lists such investments as permissible though it
36 states that loans should not exceed 10% of the net worth of a
37 licensee and the amount of such loans as total percentage of
38 permissible investments may be subject to legislation.

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

1 licensee can invest in these riskier categories.

2
3 The Drafting Committee may wish to consider the permissible
4 investment provisions contained in states where money services
5 businesses are engaged in higher volumes of business such as
6 California, New York, Florida, and Texas as a basis for
7 comparison.

8
9 **ARTICLE 7**

10 **ENFORCEMENT**

11 **SECTION 701. ORDERS TO CEASE AND DESIST; POWERS OF**
12 **SUSPENSION AND REVOCATION.**

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

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

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

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

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

31 (5) the licensee does not remove an authorized delegate

1 after the [superintendent] issues and serves upon the licensee a
2 final order setting forth a finding that the authorized delegate
3 has violated this [Act];

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

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

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

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

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

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

1 is received. The order must be served on the licensee, the
2 licensee's board of directors and any offending principal. Texas
3 Finance Code Section 153-407.

4
5 Other state laws enumerate separate and specific grounds for the
6 denial of a license or for revocation, suspension or restriction
7 of a previously granted license. Florida, for example, lists a
8 material misstatement of fact in an initial or renewal
9 application, the loss of license in another jurisdiction (due to
10 fraud or dishonest dealing), criminal convictions involving fraud
11 or dishonest dealing as grounds for license denial, suspension or
12 non-renewal. See Florida Money Transmitters' Code Section
13 560.114(2) (a) - (c).

14
15 ~~SECTION 8002. AUTHORIZED DELEGATES; CEASE AND DESIST~~
16 ~~ORDERS.~~

17 ~~(a) After notice and hearing, the [superintendent] may issue~~
18 ~~an order to cease and desist against a licensee or its authorized~~
19 ~~delegate including an order requiring the licensee to cease~~
20 ~~conducting its business through an authorized delegate and to~~
21 ~~take appropriate affirmative action if the [superintendent] finds~~
22 ~~that:~~

23 ~~(1) the authorized delegate is violating any applicable~~
24 ~~law or any order of the [superintendent];~~

25 ~~(2) the authorized delegate has failed to cooperate~~
26 ~~with any examination or investigation by the [superintendent];~~

27 ~~(3) the competence, experience, or integrity of the~~
28 ~~authorized delegate or any controlling person of the authorized~~
29 ~~delegate indicates that it is not in the public interest to~~
30 ~~permit that person to participate in the money services business;~~

31 ~~(4) the financial condition of the authorized delegate~~
32 ~~jeopardizes the interests of the public in the conduct of money~~
33 ~~service business; or~~

34 ~~(5) the authorized delegate is engaging in any unsafe~~
35 ~~or unsound practice.~~

~~(b) A licensee is responsible for any act of its authorized delegates if the licensee had knowledge that the act violates this [Act] and the licensee willfully allowed the act to continue. The responsibility is limited to conduct engaged in by the authorized delegate under the authority granted to it in the contract between the licensee and the authorized delegate.~~

~~**Source:** Model Money Transmitter Licensing and Regulation Act Section 10.~~

~~**Reporter's Note:** Section 1002 and 1003 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 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 committee may consider further defining how licensee should supervise authorized delegates.~~

~~**SECTION 8003. — CONSENT ORDERS.**~~

~~(a) The [superintendent] may enter into consent orders at any time with any person to resolve any matter arising under this [Act]. A consent order must be signed by the person to whom it is issued or a duly~~
Selected Issue: Should the cease and desist provisions include specific reference to a licensee's books and records and also violations of the recordkeeping provisions of the Proposed Act?

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

Selected Issue: Subsection (b) concerning the factors to be considered when determining if an unsafe or unsound practice has occurred has been moved from the definition section of the Proposed Act at the suggestion of the Style Committee because it

1 is a substantive provision. The Drafting Committee should
2 consider whether such a provision properly belongs here or at
3 some other place in the act.
4

5 **SECTION 702. AUTHORIZED DELEGATES; ORDERS TO CEASE AND**
6 **DESIST.**

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

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

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

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

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

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

27 (6) the authorized delegate commits a felony.

28 **Source:** President's Commission Act Section 10 (with
29 modifications).
30

1 (SUBSECTION (b) ALTERNATIVE 1)

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

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

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

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

27
28 (SUBSECTION (b) ALTERNATIVE 2)

29 (b) If an authorized delegate violates this [Act] or a rule
30 adopted or an order issued under this [Act] as a result of the
31 licensee's negligent failure to supervise or as result of the
32 willful misconduct or willful blindness of the licensee, the
33 licensee is responsible for the violation.

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

36 **Reporter's Note:** 702(b) Alternative 1 places responsibility on
37 the licensee for the conduct of the authorized delegate to the
38 extent that the licensee knew of the delegate's misconduct or
39 allowed it to continue. The Drafting Committee needs to consider
40 whether scope of licensee liability and/or responsibility for

1 authorized delegate conduct needs to be extended to willful
2 blindness or recklessness. Additionally, the Drafting Committee
3 may consider further defining how a licensee should supervise
4 authorized delegates.

5
6 702(b) alternative 2 makes a licensee responsible for the actions
7 of the authorized delegate that are the result of the licensee's
8 negligent failure to supervise and/or willful misconduct. One
9 Observer has made the following suggestion: "The President's
10 Commission Model Act and the Arizona statute makes the licensee
11 responsible for the conduct of its authorized delegates if the
12 conduct occurred as a result of a course of negligent failure to
13 supervise or as a result of the willful misconduct of the
14 licensee."

15
16 (c) In making the determination of whether a person is
17 engaging in an unsafe or unsound practice, the [superintendent]
18 may consider the size and condition of the money services
19 business, the magnitude of the loss, the gravity of the
20 violation, and the previous conduct of the person involved.

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

28 29 **SECTION 703. TEMPORARY ORDERS TO CEASE AND DESIST.**

30 (a) Whenever the [superintendent] determines that a
31 violation of this [Act] by a licensee or authorized delegate is
32 likely to: cause immediate and irreparable harm to the licensee,
33 its customers, or the public; cause insolvency or significant
34 dissipation of assets of the licensee; weaken the condition of
35 the licensee; or otherwise prejudice the interests of consumers,
36 the [superintendent] may issue a temporary order requiring the
37 licensee or authorized delegate to cease and desist from the
38 violation. The order shall become effective upon service upon the

1 licensee or authorized delegate.

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

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

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

14 **Reporter's Note:** Some Observers had expressed concern at the
15 October 1998 meeting, that the Proposed Act did not provide the
16 superintendent with sufficient authority to deal with exigent
17 situations through the use of expedited procedures. New Section
18 703 attempts to provide the superintendent with limited authority
19 to issue temporary orders to cease and desist without first going
20 through notice and hearing procedures. Drafting Committee members
21 should consider whether such a provision should be included
22 separately or as part of the cease and desist provisions which
23 are found in Sections 701 and 702.

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

27
28 **SECTION 704. CONSENT ORDERS.** The [superintendent] may enter
29 into a consent order at any time with a person to resolve a
30 matter arising under this [Act]. A consent order must be signed
31 by the person that it is issued to or by the person's authorized
32 representative, and must indicate agreement with the terms
33 contained in the order. A consent order need not constitute an
34 admission by a person that this [Act] or a rule adopted or an
35 authorized representative, and must indicate agreement with the

1 ~~terms contained therein. A consent order need not constitute an~~
2 ~~admission by any person that this [Act], or any rule or~~
3 ~~order issued under this [Act] has been violated.~~

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

5
6 ~~SECTION 8004.~~ **SECTION 705. CIVIL PENALTIES.**

7 ~~SUBSECTION (a) ALTERNATIVE 1~~

8 ~~—(a) The [superintendent] may initiate a proceeding under [the~~
9 ~~state administrative procedure act] to impose a civil penalty~~
10 ~~against any person found to have violated any provision of the~~
11 ~~[Act] or a cease and desist order or consent agreement. No fine~~
12 ~~shall accrue until after a person has been notified in writing of~~
13 ~~the nature of the violation and has been afforded a reasonable~~
14 ~~period of time, as set forth in the notice, to correct the~~
15 ~~violation and has failed to do so. Except as provided in this~~
16 ~~section, a fine may not exceed [\$100] per day for each violation.~~

17 ~~SUBSECTION (a) ALTERNATIVE 2~~

18 ~~_____ (a) A person who~~that ~~violates this [Act] may be assessed a~~
19 ~~civil penalty by [the superintendent] in an amount equal to~~
20 ~~[\$1,000] per day plus the State's~~~~an amount equal to the gross~~
21 ~~business conducted in connection with the violation plus the state's costs~~
22 ~~and expenses for the investigation and prosecution of the matter,~~
23 ~~including reasonable attorney's fees.~~

24 ~~(b) The [superintendent] may impose a fine not to exceed~~
25 ~~[\$1,000] per day for each day a person engages in money services~~
26 ~~business activities without a license.~~

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

28 **Reporter's Note:** The current Section 804 was the second of two
29 alternative subparagraphs included in the February 1998 draft.
30 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.

~~(e)~~ (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 section[Act] is alleged to have occurred or in any other ~~county~~[county] in which venue is permitted under [reference to ~~Statethis State's~~ venue statutes and rules] in the same manner as the filing of other civil actions.

Source: ~~Model Money Transmitter Licensing and Regulation~~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) eliminated and subsection (a) amended to provide that a civil penalty may be assessed after the licensee if provided with notice and an opportunity for a hearing?

~~SECTION 8005.~~ SECTION 706. CRIMINAL PENALTIES.

~~(a) A person who directly or through another person violates or attempts to violate provision of this [Act] for which a different penalty is not specifically provided is guilty of a [reference to state classification] felony. Each transaction in violation of this [Act] and each day that a violation continues~~

~~is a separate offense.~~

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

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

~~(d)~~ (c) A person ~~whothat~~ knowingly and willfully engages in ~~the business of money transmission without a license~~ any conduct for which a license is required under this [Act] without being licensed under this [Act] is guilty of a [reference to state classification] felony.

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

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

~~SECTION 8006.~~ SECTION 707. UNAUTHORIZED ACTIVITIES.

~~(a) A person~~ (a) A person, other than a licensee or an authorized delegate, may not engage in a money services business ~~activities in this state~~ unless the person is ~~exempted from the licensing requirements of this [Act].~~ excluded under Section 104.

~~(b) No person shall act~~ (b) A person may not engage in conduct as an authorized delegate of a ~~money services business when the money service business is~~ person required to obtain a license under this [Act] but ~~has failed to do so. who is not so licensed.~~ The person ~~that engages in that conduct~~ becomes the principal and ~~is no longer merely acts as~~ an authorized delegate. The person is also liable to the holder or remitter as a principal ~~money transmitter of a money services business.~~

~~(c) The superintendent~~ (c) The [superintendent] may issue a complaint ~~against any person who engages in money service business activities without a license and seek a~~ and issue an ~~order to~~ cease and desist ~~order. against a person that engages in the business without a license.~~ The [superintendent] may also impose a civil monetary penalty under Section ~~8005.705.~~

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

Reporter's Reporter's Note: The MTRA has observed that ~~state~~ State regulators need authority to deal with money services businesses that operate without a ~~license.~~ ~~license. The Style Committee has pointed out that Section 707 may be redundant~~

~~SECTION 8007. INJUNCTIONS. If it appears that any person has committed or is about to commit a violation of any provision of this [Act] or of any rule or order of the [superintendent], the [superintendent] may apply to the [name of appropriate court] got an order enjoining the person from violating or continuing to violate this [Act], rule, or order, and for injunctive or other relief.~~

Source: Model Act Regulating Money Transmitters Section 24(A).

Reporter's Note: The MTRA members requested that state regulators

1 ~~be given the ability to seek injunctive relief with respect to~~
2 ~~violations of the act.~~

3 ~~PART 9.~~

4 ~~ADMINISTRATIVE PROCEDURES.~~ given the prohibitions against
5 ~~unlicensed activity in the Proposed Act.~~

7 ~~ARTICLE 8~~

8 ~~ADMINISTRATIVE PROCEDURES~~

9 ~~SECTION 901.~~ SECTION 801. ADMINISTRATIVE PROCEDURES. All

10 administrative proceedings under this [Act] ~~shall be conducted~~ must
11 be conducted in accordance with the [state administrative
12 procedure act].

13 ~~Administrative Procedure Act~~].

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

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

21
22 ~~SECTION 901.~~ SECTION 802. HEARINGS.

23 (a) The [superintendent] may not suspend or revoke a
24 license, ~~or~~ issue an order to cease and ~~desist order~~ desist, revoke
25 the designation of an authorized delegate, or assess a civil
26 penalty without holding a hearing.

27 ~~The Source:~~ Model Money Transmitter Licensing and Regulation Act
28 ~~Section 12.~~

30 ~~PART 10.~~

31 ~~MISCELLANEOUS PROVISIONS.~~

32
33 ~~[superintendent] shall also hold a hearing when requested to do~~
34 ~~so by an applicant whose application is denied.~~

35 (b) The [superintendent] shall give a licensee or an
36 applicant at least [10] days written notice of the time and place

1 of a hearing by registered or certified mail, addressed to the
2 licensee or applicant at its last-known address.

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

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

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

29 ~~**SECTION 1001. CONSUMER DISCLOSURE.** Every~~**Reporter's Note:** The
30 Former Section 1001 on Consumer Disclosure has been eliminated.

31 This provision previously required that "Every licensee and
32 authorized delegate shall provide each consumer of a money
33 services_s business transaction a toll-free telephone number for
34 the purpose of consumer inquiries. In lieu of a ~~toll-free~~toll
35 ~~free~~ number, the licensee or authorized delegate may provide the
36 address and telephone number of the ~~{superintendent}~~.

37 ~~**Source:** Florida Money Transmitters Code Section 560.128~~

38 ~~**Reporter's Note:** MTRA members suggested that the act should~~
39 ~~include a provision for a toll free number which consumers may~~
40 ~~call. The Draft NDP Act does not address the regulation of~~
41 ~~consumer fees for money services businesses (e.g., the fee for~~
42 ~~cashing checks) because the scope of the act deals with the~~
43 ~~licensing of money service businesses as it relates to the~~
44 ~~prevention of money laundering. The Draft NDP Act therefore does~~
45 ~~not address consumer issues.~~
46 [superintendent]."
47

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

8 9 ARTICLE 9

10 MISCELLANEOUS PROVISIONS

11 ~~SECTION 1002.~~ SECTION 901. APPOINTMENT OF [SUPERINTENDENT] AS
12 AGENT FOR SERVICE OF PROCESS.

13 ~~(a) A licensee, an authorized delegate or person who engages in~~
14 ~~business activities that are regulated under this [Act] without~~
15 ~~filing an application for a license is considered~~ (a) A licensee
16 or a person that engages in the business without being licensed
17 is deemed to have done both of the following:

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

21 _____ (2) appointed the [superintendent] as ~~his or her~~ its
22 lawful agent for the purpose of accepting service of process in
23 any action, suit, or proceeding ~~that may arise~~ arising under this
24 [Act].

25 _____ (b) Within ~~+~~ [three] business days after service of
26 process upon the [superintendent], the [superintendent] shall
27 ~~transmit~~ send by certified mail copies of all lawful process
28 accepted by the [superintendent] as ~~an~~ a person's agent to ~~that~~ the
29 person at its ~~last known~~ last-known address. Service of process
30 ~~shall be considered~~ is complete ~~+~~ [three] business days ~~after~~ after
31 the [superintendent] deposits the copies of the ~~documents~~ process

1 | in the United States mail.]

2 | **Source:** Model Act Regulating Money Transmitters Section 28.

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

5 |
6 | ~~SECTION 1003.~~ SECTION 902. UNIFORMITY OF APPLICATION AND

7 | CONSTRUCTION. In applying and construing this [Act],

8 | consideration must be given to the need to promote uniformity of

9 | the law with respect to its subject matter among States that

10 | enact it.

11 | **Source:** USL Drafting Manual.

12 |
13 | ~~SECTION 1103.~~ SECTION 903. SEVERABILITY. If any provision of

14 | this [Act] or its application to any person or circumstance is

15 | held invalid, the invalidity does not affect other provisions or

16 | applications of this [Act] which can be given effect without the

17 | invalid provision or application, and to this end the provisions

18 | of this [Act] are severable.

19 | **Source:** USL Drafting Manual.

20 |
21 | ~~SECTION 1104.~~ SECTION 904. EFFECTIVE DATE.

22 | **Source:**

23 |
24 | ~~SECTION 1105.~~ SECTION 905. SAVINGS AND TRANSITIONAL PROVISIONS.

25 | **Source:**

26 |