DRAFT

FOR DISCUSSION ONLY

UNIFORM MONEY-SERVICES BUSINESS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

OCTOBER, 1999

UNIFORM MONEY-SERVICES BUSINESS ACT

WITH REPORTER'S NOTES

Copyright © 1999
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or Reporter's Notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

DRAFTING COMMITTEE ON UNIFORM MONEY SERVICES BUSINESS ACT*

TOM BOLT, Corporate Place, Royal Dane Mall, St. Thomas, VI 00802-6410, *Chair*
DAVID A. GIBSON, P.O. Box 1767, 10 Park Place, Brattleboro, VT 05302
MICHAEL HOUGHTON, P.O. Box 1347, 18th Floor, 1201 N. Market Street, Wilmington, DE 19899
L. GENE LEMON, 1136 W. Butler Drive, Phoenix, AZ 85021-4428
SANDRA S. STERN, 509 Madison Avenue, Suite 612, New York, NY 10022
KEN H. TAKAYAMA, Legislative Reference Bureau, State Capitol, Room 446, Honolulu, HI 96813
ANITA RAMASASTRY, University of Washington, School of Law, Condon Hall, 1100 N.E. Campus Parkway, Seattle, WA 98105-6627, *Reporter*

EX OFFICIO

JOHN L. McCLAUGHERTY, P.O. Box 553, Charleston, WV 25322, *President*
JOHN P. BURTON, P.O. Box 1357, Suite 101, 123 E. Marcy Street, Santa Fe, NM 87501, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

DAVID S. WILLENZIK, 643 Magazine Street, New Orleans, LA 70130, Advisor
MARIETTA M. MAXFIELD, 1980 Post Oak Boulevard, Suite 748, Houston, TX 77056-3817

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019, Executive Director
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, Executive Director, Emeritus

Copies of this Draft Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 East Ontario, Suite 1300
Chicago, Illinois 60611
(312) 915-0195

---

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

UNIFORM MONEY-SERVICES BUSINESS ACT

TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. 1
SECTION 102. DEFINITIONS. 1
SECTION 103. SUPERVISORY POWERS OF [SUPERINTENDENT]. 8
SECTION 104. EXCLUSIONS. 9
SECTION 105. LICENSE REQUIRED. 11

ARTICLE 2

LICENSING OF MONEY TRANSMITTERS

SECTION 201. LICENSE REQUIRED. 12
SECTION 202. APPLICATION FOR LICENSE. 12
SECTION 203. SECURITY. 17
SECTION 204. ISSUANCE OF LICENSE. 19
SECTION 205. RENEWAL OF LICENSE. 20
SECTION 206. FEES. 22
SECTION 207. NET WORTH. 23
SECTION 208. PAYMENT INSTRUMENT IDENTIFICATION. 23

ARTICLE 3

LICENSING OF CHECK CASHERS

SECTION 301. LICENSE REQUIRED. 23
SECTION 302. APPLICATION FOR LICENSE. 24
SECTION 303. ISSUANCE OF LICENSE. 25
SECTION 304. RENEWAL OF LICENSE. 26
SECTION 305. FEES 27

ARTICLE 4

LICENSING OF CURRENCY EXCHANGERS

SECTION 401. LICENSE REQUIRED. 28
SECTION 402. APPLICATION FOR LICENSE. 29
SECTION 403. ISSUANCE OF LICENSE. 30
SECTION 404. RENEWAL OF LICENSE. 31
SECTION 405. FEES. 32

ARTICLE 5

AUTHORIZED DELEGATES

SECTION 501. RELATIONSHIP BETWEEN LICENSEES AND AUTHORIZED DELEGATES. 32
SECTION 502. SCOPE OF AUTHORIZED DELEGATE'S ACTIVITY. 33
SECTION 503. UNAUTHORIZED ACTIVITIES. 34

ARTICLE 6

EXAMINATIONS; REPORTS AND OTHER RECORDS

SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS. 34
SECTION 602. JOINT EXAMINATIONS. 35
SECTION 603. REPORTS. 36
SECTION 604. CHANGE OF CONTROL. 37
SECTION 605. BOOKS, ACCOUNTS, DOCUMENTS, AND OTHER RECORDS. 39
SECTION 606. MONEY LAUNDERING REPORTS. 41
SECTION 607. ELECTRONIC FILING OF RECORDS. 42
SECTION 608. CONFIDENTIALITY OF RECORDS. 42

ARTICLE 7

PERMISSIBLE INVESTMENTS

SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS. 45

SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS. 45

ARTICLE 8

ENFORCEMENT

SECTION 801. ORDERS TO CEASE AND DESIST; POWERS OF SUSPENSION AND REVOCATION. 49

SECTION 802. AUTHORIZED DELEGATES; ORDERS TO CEASE AND DESIST. 51

SECTION 803. TEMPORARY ORDERS TO CEASE AND DESIST. 52

SECTION 804. CONSENT ORDERS. 53

SECTION 805. CIVIL PENALTIES. 53

SECTION 806. CRIMINAL PENALTIES. 54

ARTICLE 9

ADMINISTRATIVE PROCEDURES

SECTION 901. ADMINISTRATIVE PROCEDURES. 55

SECTION 902. HEARINGS. 56

ARTICLE 10

MISCELLANEOUS PROVISIONS

SECTION 1001. APPOINTMENT OF [SUPERINTENDENT] AS AGENT FOR SERVICE OF PROCESS. 56

SECTION 1002. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 57

SECTION 1003. SEVERABILITY CLAUSE. 57

SECTION 1004. EFFECTIVE DATE. 57

SECTION 1005. SAVINGS AND TRANSITIONAL PROVISIONS. 57

ARTICLE 1
GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. In this [Act]:

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

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

(3) “Bank” means an institution organized under federal or state law that accepts demand deposits or checking accounts and is also engaged in the business of making commercial loans.

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

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

(6) "Control" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Money-services business" means a person that engages in the business of money transmission, check cashing, or currency exchange.

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

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

(22) "Payment instrument" means a check, draft, money order, traveler's check in record form, stored-value instrument, or other instrument for the transmission or payment of

money, and in record form, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

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

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

(25) "Remit" means to make direct payment of money to a licensee or its representative authorized to receive the money or to deposit money in a financial institution in an account specified by the licensee.

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

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

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

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

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

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

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

Notes to This Draft:

1. A new definition of bank has been added to clarify the use of this term throughout the draft. The definition of bank provides a clearer comparison of the money services businesses which are non-bank entities that do not accept deposits or make commercial loans. The source of this definition is a modified definition contained in section 2 (c) of the Federal Bank Holding Company Act. 12 U.S.C. 1841(c)

2. It is still an open question as to whether the definition of “money transmission” contained in subsection (20) includes new internet or on-line payment mechanisms that are operated by non-bank entities including the use or transmission of electronic currency or on-line “scrip”. For example, an issuer might offer consumers the opportunity to buy internet scrip. A consumer would buy this scrip from the issuer and this notational value would be stored on the hard drive of a computer and transferred to merchants for purchases over the internet. The merchant would redeem the internet scrip or exchange it for value by redeeming it at the bank or the nonbank which is the issuer. Some commentators have noted that the transfer of value or funds over the internet is akin to money transmission. This issue needs to be more clearly considered by the committee. To the extent that internet scrip or on-line currency providers are covered by this Act, the Committee will need to consider the consequences of requiring an entity which may have a virtual (as opposed to physical) presence in many jurisdictions to obtain a license. In a 1996

report on emerging electronic methods for retail payments, the United States Congressional Budget Office noted that:

> [T]he supervision and regulations covering depository institutions safeguard the safety and soundness of those institutions. Lacking those safeguards, an electronic payment method issued by an unregulated institution is more likely to fail. Such a failure could undermine consumers' confidence in other issuers. Thus, the best interest of the payment system may be served by having safeguards in place to protect it from consequences of the failure of individual institutions

See Emerging Electronic Methods for Making Retail Payments, Congressional Budget Office (June 1996), at 42).

Reporter's Notes

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

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

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

4. "Engage in the business." Because the Act is intended to apply only to those entities engaged in the money-services business as a commercial enterprise, the current definition was added. The definition of engage in the business is a modified version of the 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 Section 4(d). The commentary to the President's Commission Act states that "'[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 law, 18 U.S.C. 1955, provides useful case law examples."

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

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

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

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

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

10. "Stored-value instrument." At the October 1998 drafting meeting, the Committee decided that stored-value providers should be required to obtain licenses under the Act. At present, stored-value instruments are encompassed within the definition of payment instruments. In 1998, Connecticut enacted the Act Concerning Electronic Payment Instruments and Currency and Foreign Transactions Reporting. The Connecticut statute amended existing money-transmission law so those stored-value products (referred to as "electronic payment instruments") are treated as payment instruments. Furthermore, issuers of such payment instruments are subject to licensing and regulation in Connecticut. See CT. Legis. 98-192, cited in 1998 Conn. Legis. Serv. P.A. 98-192 (S.S.B. 230) (West 1998). The Committee will continue to review the definition of

"stored value" in the Act. For example, there have been suggestions that such a payment substitute should not be defined in relation to an instrument but more broadly in terms of the actual concept of its "value."

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

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

SECTION 103. SUPERVISORY POWERS OF [SUPERINTENDENT]. Consistent with this [Act] the [superintendent] shall adopt rules pursuant to the [administrative procedure act] necessary to achieve the purposes of this [Act].

Source: New

Reporter's Note

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

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

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

(2) the United States Postal Service;

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

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

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

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

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

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

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

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

(11) a person engaging in the business of issuing, selling, or redeeming stored-value instruments and which is subject by a state or federal banking supervisor to a safety and soundness regime that addresses investment and capital requirements.

Notes to This Draft: The exclusion for entities that provide stored value but who are supervised by a federal or state-banking agency has been amended. Previously, these entities were excluded if they did not issue, sell or redeem stored value directly to consumers and also were subject to regulation, supervision, and examination by a federal or state banking agency. Based on recommendations from the American Bar Association's Task Force on Stored Value, the Committee decided to refine the exclusion for entities that issue stored value instruments to exclude those entities that are subject to regulation, supervision and examination by a state or federal banking agency as long as the stored value provider is subject to a safety and soundness regime. See Letter from American Bar Association Task Force on Stored Value to David S. Willenzik, ABA Advisor to the UMSBA Drafting Committee (March 23, 1999) (copy on file with NCCUSL). Safety and soundness requirements would include minimum capital requirements and restrictions on investments. The Committee felt that entities that were already subject to regulatory oversight by a banking regulator and which had to comply with safety and soundness requirements would not pose a risk with respect to consumers. Furthermore, the concern about having information about the entity and its delegates would similarly be fulfilled because of oversight from banking regulators.

Reporter's Notes

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

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

3. The proposed exclusion involving boards of trade was submitted to the Financial Crimes Enforcement Network of the United States Department of Treasury by various clearing organizations that collectively represent several of the largest commodity 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 U.S. Securities and Exchange Commission and the U.S. Commodities and Futures Trading Commission.

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

5. The proposed exclusion for stored-value issuers, sellers or redeemers relates only to those entities that are subject to oversight by a federal or state banking agency and which are subject to safety and soundness regime that includes investment and capital requirements. Such entities would already be regulated from a safety and soundness standpoint by banking regulators. Because such entities will have to adhere to capital requirements and also have their investment activity monitored and also regulated, consumer interests should be protected.

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

(d) A license is not transferable or assignable except as otherwise provided by the [superintendent].

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

Reporter's Note

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

ARTICLE 2

LICENSING OF MONEY TRANSMITTERS

SECTION 201. LICENSE REQUIRED.

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

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

Source: New

Notes to This Draft: A new Section 201 has been created in order to separate the requirements for which entities must obtain a license and the license applications procedures (which are now set forth in Section 202 below).

SECTION 202. APPLICATION FOR LICENSE.

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

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

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

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

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

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

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

(7) a document confirming that the requirements for security and net worth as set forth in Sections 203 and 207 have been or will be satisfied; and

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

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

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

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

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

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

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

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

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

[ALTERNATIVE 1]

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

[ALTERNATIVE 2]

(8) if the applicant is a publicly traded corporation, a copy of the most recent 10K report filed with the United States Securities and Exchange Commission;

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

(A) a corporation publicly traded in the United States, audited financial statements for the parent corporation for the current year or the parent corporation's most recent 10K reports filed with the United States Securities and Exchange Commission;

(B) a corporation publicly traded outside of the United States, similar documentation filed with the parent corporation's non-United States regulator; and

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

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

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

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

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

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

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

(d) The [superintendent] may waive a requirement of subsections (a) through (c) or permit an applicant to submit substituted information in lieu of the required information if the waiver is in the public interest.

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

Notes to This Draft: Two major changes have been made to Section 202. First, a new

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

Reporter's Notes

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

As set forth in Articles 2, 3, and 4, separate licensing requirements are established for money transmitters and for check cashers/foreign currency exchangers. The superintendent's supervisory and enforcement powers, however, are the same for all money-services businesses. The licensing requirement promotes one of the main goals of the Act: to create an appropriate regulatory framework to deter and eliminate the use of money-services businesses as potential vehicles for money laundering. Only a handful of states have attempted to create a framework that links all money-services businesses together within a statute, while recognizing the differences inherent in the various activities concerned. Florida and Arizona, for example, are two states that have enacted statutes that have uniform enforcement and penalty provisions for all money-services businesses, while retaining separate licensing and recordkeeping provisions for each type of money-service activity. The Drafting Committee chose this approach because, for law enforcement purposes, the state superintendent and the Attorney General need general enforcement powers with respect to each of the different entities as a means of prevention and detection of money laundering. Therefore, the Act contains uniform enforcement provisions and different licensing requirements for each type of activity.

The licensing application is the first point at which the state may protect the public by prohibiting entry by those persons that would bring discredit on the industry, and the first source of information for investigators and regulators in the event that there is future misconduct by a licensee. The information requested from money-transmitter applicants in Section 201 is the type of information recommended by MTRA in Section IV of its Model Legislation Outline and also in the Model Act Regulating Money Transmitters. The information concerning criminal convictions and employment histories, as well as the identity of executive officers, key shareholders, controlling persons and responsible individuals is designed to assist the superintendent in determining whether the license applicant is a reputable business or whether there are any suggestions that the business might be used for illegal purposes. Additionally, information

relating to the applicant's financial position (including information about net worth) is necessary in order to determine whether an applicant will be able to meet its obligations with respect to any obligations it might have (in connection with the sale of money orders, traveler's checks and stored value and funds transfer).

SECTION 203. SECURITY.

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

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

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

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

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

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

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

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

Source: Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12 Transmitters of Money; A.R.S. Section 6-1205; President's Commission Act Section 8.

Reporter's Note

The bond and net worth requirements are safety and soundness measures designed to protect the public, but also to deter companies that have questionable solvency or business practices from entering the market. The bond requirement serves as a barrier to entry for financially unstable companies. Alternatives to the bond requirement, however, are provided in the form of cash or letters of credit. Licensees may also be permitted to deposit specified liquid assets in the amount of the bond. The Drafting Committee has attempted a balance between the goals of safety and soundness and of providing open access to businesses that wish to enter the money transmission market, recognizing that decisions as to the final dollar amounts will need to reflect the particular fiscal needs and concerns of different states.

SECTION 204. ISSUANCE OF LICENSE.

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

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

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

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

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

for approval, the application is deemed approved and the [superintendent] shall issue the license under this [article] effective as of the first business day after expiration of the period.

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

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

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

Reporter's Notes

The Drafting Committee has previously inquired as to whether states have mandatory time frames in which the superintendent must respond to license applications. MTRA supplied the Drafting Committee with sample statutory provisions that included mandatory time frames for response to a license application. Based on existing state practice, the Drafting Committee decided on a 120-day response period. The MTRA Model Legislation Outline recommends a 120-day time period. The extension for "good cause" comes from the Maine Act to Regulate Money Transmitters and Amend Consumer Credit Laws, 32 M.R.S.A. Section 6109(2).

SECTION 205. RENEWAL OF LICENSE.

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

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

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

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

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

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

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

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

(c) The [superintendent] may require the licensee to increase the amount of its security if the number of its locations has increased as indicated in its renewal report. The amount of the security may be increased by [$10,000] per location, not exceeding a total increase of [$250,000]. The [superintendent], however, may also increase the amount of security required to a maximum

of [$500,000] upon the basis of the impaired financial condition of a licensee, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

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

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

Notes to This Draft: Section 205 has been revised to provide for automatic license suspension in the event that a licensee fails to renew its license in a timely fashion. In the previous draft, the superintendent was required to send a notice of suspension to the licensee. The superintendent has a preexisting duty to notify the licensee of the renewal date and to send the licensee a renewal form. Thus, it was felt unnecessary to require the superintendent to notify the licensee of its own failure to renew its license. A new subsection (c) has also been added which allows the superintendent to adjust the amount of security which the licensee is required to maintain.

Reporter's Note

The Drafting Committee decided that it was too cumbersome 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, will have 30 days to cure its failure to renew its license. As part of the renewal process, Article 2 licensees are required to submit additional information to the superintendent as a means of appraising the safety and soundness of the business.

SECTION 206. FEES.

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

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

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

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

Reporter's Note

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

SECTION 207. NET WORTH. A licensee under this [article] shall maintain a net worth in liquid assets of at least [$100,000] plus [$10,000] for each location at which the licensee or an authorized delegate engages in the business, up to a maximum of at least [$500,000].

Source: President's Commission Act Section 8.

Reporter's Note

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

SECTION 208. IDENTIFICATION OF PAYMENT INSTRUMENT. A payment instrument sold by a licensee directly, or indirectly through an authorized delegate, must bear the name of the licensee and a unique, consecutive number clearly stamped, imprinted or electronically recorded on the instrument.

ARTICLE 3

LICENSING OF CHECK CASHERS

SECTION 301. LICENSE REQUIRED.

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

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

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

Source: New

Notes to This Draft: A new Section 301 has been created in order to state the requirements for which entities must obtain a license separately from the license applications procedures (which are now set forth in Section 302 below).

SECTION 302. APPLICATION FOR LICENSE.

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

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

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

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

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

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

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

Reporter's Note

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

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

SECTION 303. ISSUANCE OF LICENSE.

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

(1) the applicant has complied with Section 302;

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

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

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

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

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

Reporter's Note

See the Reporter's Note accompanying Section 203.

SECTION 304. RENEWAL OF LICENSE.

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

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

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

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

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

Notes to This Draft: As in Section 204, the licensee's license shall be suspended immediately if the licensee fails to renew its license in a timely fashion.

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

Reporter's Note

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

SECTION 305. FEES.

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

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

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

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

Reporter's Note

See the Reporter's Note accompanying Section 206.

ARTICLE 4

LICENSING OF CURRENCY EXCHANGERS

SECTION 401. LICENSE REQUIRED.

(a) A person that is not an authorized delegate of a licensee under [Article] 2 or that is not licensed under [Article] 2 or 3 may not engage in the business of currency exchange without first obtaining a license under this [article].

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

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

Source: New

Notes to This Draft: A new Section 401 has been created in order to state the requirements for which entities must obtain a license separately from the license applications procedures (which are now set forth in Section 402 below).

SECTION 402. APPLICATION FOR LICENSE. A person applying for a license under this [article] must do so in writing, under oath, and in a form prescribed by the [superintendent]. The application must state or contain:

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

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

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

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

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

Reporter's Notes

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

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

SECTION 403. ISSUANCE OF LICENSE.

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

(1) the applicant has complied with Section 401;

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

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

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

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

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

Reporter's Note

See the Reporter's Note accompanying Section 203.

SECTION 404. RENEWAL OF LICENSE.

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

(b) A licensee under this [article] shall submit with the renewal fee a report, in a form prescribed by the [superintendent]. The [superintendent] shall send a copy of the form to each

licensee under this [article] no later than [three months] immediately before the date for license renewal. The renewal report must state or contain:

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

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

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

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

Notes to This Draft: As in Section 204, the licensee's license shall become suspended immediately if the licensee fails to renew its license in a timely fashion.

Reporter's Note

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

SECTION 405. FEES.

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

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

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

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

Reporter's Note

See the Reporter's Note accompanying Section 206.

ARTICLE 5
AUTHORIZED DELEGATES

SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED DELEGATE.

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

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

(c) Upon the suspension or revocation of a license or the failure of a licensee to renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are on record with the [superintendent] of the suspension, revocation, or failure to renew. On receipt of the notice, an authorized delegate shall immediately cease to engage in the business as a delegate of the licensee.

Source: President's Commission Act Section 10.

Reporter's Note

The sections included in Article 5 are meant to further delineate the nature of the authorized delegate's relationship with the licensee and to further clarify the delegate’s responsibilities and obligations. Similarly, this section also sets forth some of the general obligations that the licensee

has with respect to providing the delegate with a contract and making the delegate aware of relevant laws and rules.

SECTION 502. SCOPE OF AUTHORIZED DELEGATE'S ACTIVITY. An authorized delegate may not intentionally engage in the business that is outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity for which the authorized delegate is licensed under [Article] 2, 3, or 4. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

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

Reporter's Note

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

SECTION 503. UNAUTHORIZED ACTIVITIES. A person may not engage in conduct as an authorized delegate of a person that is not licensed under this [Act]. A person that engages in that conduct is engaging in the business to the same extent as if the person were a licensee.

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

Reporter's Note

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

ARTICLE 6

EXAMINATIONS; REPORTS AND OTHER RECORDS

SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.

(a) The [superintendent] may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee. The [superintendent] may examine the licensee or its authorized delegate without having given notice, to determine if the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act],

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

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

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

Reporter's Note

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

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

SECTION 602. JOINT EXAMINATIONS.

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

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

Source: Model Act Regulating Money Transmitters Section 14.

Reporter's Note

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

SECTION 603. REPORTS.

(a) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, responsible individuals, and locations in this

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

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

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

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

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

(4) an [indictment], prosecution, or conviction of the licensee or of an executive officer, director, or controlling person for a felony related to activities regulated under this [Act], involving a violation of state or federal money laundering laws or other financial crimes; or

(5) an [indictment], prosecution, or conviction of an authorized delegate for a felony of which the licensee has knowledge related to activities regulated under this [Act] or involving a violation of state or federal money laundering laws, or other financial crime.

Source: President's Commission Act Section 13.

Reporter's Note

Reports are essential to the proper regulation of problem delegates or licensees. Although on-site examinations are authorized, the reporting requirements provide a cost efficient mechanism for superintendents and industry members alike. Certain significant events must be reported immediately, including a money-laundering allegation against a delegate. The Drafting Committee, after consultation with Observers, decided that quarterly reporting was only necessary with respect to changes in authorized delegates. Furthermore, annual audited financial statements are only required for Article 2 licensees (as this relates once again to the safety and soundness of

money transmitters and their financial solvency). All licensees are required to file renewal reports pursuant to Articles 2, 3 and 4.

SECTION 604. CHANGE OF CONTROL.

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

(b) A licensee who is subject to federal or state securities laws, shall give the [superintendent] written notice of a proposed change of control within [15] days after learning of the proposed change of control.

(c) A licensee who is not subject to federal or state securities laws, shall give the [superintendent] written notice of a proposed change of control at least 30 days before the date of the proposed change of control.

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

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

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

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

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

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

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

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

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

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

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

Reporter's Note

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

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

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

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

(1) a record of each payment instrument sold;

(2) a record of each payment instrument cashed;

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

(4) bank statements and bank reconciliation records;

(5) records of outstanding payment instruments;

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

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

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

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

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

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

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

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

Reporter's Note

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

SECTION 606. MONEY LAUNDERING REPORTS.

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

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

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

Reporter's Note

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

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

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

laundering activities are reported to Arizona's Attorney General on a one-page form. Georgia provides that each financial institution must keep a record of currency transactions in excess of $10,000 and that those reports must be filed with the state within 15 days of the transaction.

SECTION 607. ELECTRONIC FILING OF RECORDS. The [superintendent], by rule, may order that an application, report, or record that is required to be filed pursuant to [this Act] may be filed electronically.

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

Reporter's Notes

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

[ALTERNATIVE 1]

SECTION 608. CONFIDENTIALITY OF RECORDS.

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

(b) The [superintendent] may disclose confidential information pertaining to a licensee and authorized delegate to:

(1) a district attorney in this State;

(2) the attorney general of this State;

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

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

(c) The [superintendent] may:

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

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

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

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

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

[ALTERNATIVE 2]

SECTION 608. CONFIDENTIALITY OF RECORDS.

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

(b) Nothing in this section prohibits the [superintendent] from releasing to the public a list of persons licensed under this act or from releasing aggregate financial data on licensees.

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

Reporter's Note

At the annual meeting in July 1999, some concern was expressed that the confidentiality provisions contained in Alternative 1 were too onerous and that the public should have access to some information about licensees. Alternative 2 is a pared down confidentiality provision which protects the business or proprietary financial information that may be submitted by a license applicant or licensee. This provision might also be coupled with a separate investigative provision that would permit the attorney general or county attorney to conduct investigations to determine whether a licensee, authorized delegate or person engaged in money services business has failed to file a report required by this Act or has engaged in any act that constitutes a violation of this Act. See, e.g., Iowa Financial Transactions Reporting Act Section 529.3 (IA St. §529.3)

ARTICLE 7

PERMISSIBLE INVESTMENTS

SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

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

(b) The [superintendent], with respect to any licensees, may limit the extent to which a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a United State bank or financial institution. The

[superintendent] by rule may prescribe or by order allow other types of investments that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.

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

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

Reporter's Note

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

SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.

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

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

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

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

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

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

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

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

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

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

(3) a demand borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and a licensee does not at one time have principal and interest outstanding under demand borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

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

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

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

Reporter's Notes

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

The items that the Committee identified as potentially problematic were:

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

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

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

Receivables, in particular, was one category that received considerable attention by members of the Committee. Industry Observers, however, explained that there was a practical reason for including receivables as a category of permissible investments. They noted that the practice of including receivables as permissible investments had become a necessity due to the use of automated money-order dispensers. Typically, money orders are sold at sales outlets through automated dispensers. The automated dispenser immediately records the sale of the money order and notifies the money transmitter. This real-time "notification" immediately triggers the obligation of a money transmitter to retain permissible investments for the money order sold on a dollar for dollar basis. However, while the obligation to maintain investments is triggered at the time of sale, there is a lag of time until the sales outlet actually remits funds to the money

transmitter. For the time period between sale and remittance of the funds that the sales outlet has received, the money transmitter needs to treat those "receivables" as part of its permissible investment portfolio. Previously, authorized delegates had notified a money transmitter of the number of money orders sold at the same time that it remitted a check for the funds received.

ARTICLE 8

ENFORCEMENT

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

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

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

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

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

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

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

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

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

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

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

Reporter's Notes

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

Some states provide more detailed standards for when a cease and desist order becomes effective. The Texas Currency Exchange Transportation and Transmission provisions of the Texas Finance Code provide that a cease and desist order takes effect on issuance if the Banking Commissioner finds a threat of immediate and irreparable harm to the license holder or the public. If no immediate or irreparable harm is found, the order is not effective before 10 days after the order is received. Other state laws enumerate separate and specific grounds for the denial of a license or

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

SECTION 802. AUTHORIZED DELEGATES; ORDERS TO CEASE AND DESIST.

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

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

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

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

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

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

(6) the authorized delegate commits a felony.

(b) In determining whether a person is engaging in an unsafe or unsound practice, the [superintendent] may consider the size and condition of the money transmitter, the magnitude of

the loss, the gravity of the violation of this [Act], and the previous conduct of the person involved.

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

Reporter's Note

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

SECTION 803. TEMPORARY ORDERS TO CEASE AND DESIST.

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

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

(c) Within 10 days after a licensee or an authorized delegate is served with a temporary order to cease and desist, the licensee or authorized delegate may petition the [appropriate court], for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the temporary order pending the completion of an administrative proceeding pursuant to Section 801 or 802.

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

Reporter's Note

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

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

Source: Model Act Regulating Money Transmitters Section 24.

Reporter's Note

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

SECTION 805. CIVIL PENALTIES.

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

(b) The [superintendent] may maintain an action in the [name of appropriate court or adjudicatory body] in the [county] in which a violation of this [Act] or of a rule adopted or an

order issued under this [Act] is alleged to have occurred or in any other [county] in which venue is permitted under [reference to this State's venue statutes and rules] in the same manner as in other civil actions.

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

Reporter's Note

In addition to the ability to take disciplinary action against a money-services business or its delegates for violations of the Act, civil penalties provide another enforcement mechanisms aimed at deterring money laundering. As discussed at the first meeting of the Drafting Committee, civil penalties are preferred enforcement mechanisms due to the commercial nature of the Act. The current Section 805 was the second of two alternatives included in the February 1998 draft. The first alternative capped the maximum civil penalty at $100 per day per violation. The same provision also allowed licensees an opportunity to cure their violations. The Drafting Committee decided that such a "cure" provision eliminated much of the effectiveness of the civil money penalty provision. The second alternative, which was retained in the Act, has been modified. Previously, it included a reference to a fine equal to the gross business engaged in connection with the violation. The Drafting Committee and Observers alike considered this too imprecise a formula. Instead, a civil money penalty of $1,000 per day is included. Additionally, the Committee eliminated former subsection 805 (b), which included a separate fine of $1,000 per day for engaging in a money-services business without a license. It was decided that this was, by definition, a violation of the Act and therefore did not need to be the subject of a separate provision.

SECTION 806. CRIMINAL PENALTIES.

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

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

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

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

Reporter's Note

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

ARTICLE 9

ADMINISTRATIVE PROCEDURES

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

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

Reporter's Note

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

SECTION 902. HEARINGS.

(a) Except as otherwise provided in Sections 205(c), 305(c), 405(c), and 803, the [superintendent] may not suspend or revoke a license, issue an order to cease and desist, revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The [superintendent] shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

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

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

Reporter's Note

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

ARTICLE 10

MISCELLANEOUS PROVISIONS

SECTION 1001. APPOINTMENT OF [SUPERINTENDENT] AS AGENT FOR SERVICE OF PROCESS.

(a) A licensee or a person that engages in the business without being licensed under this [Act] is deemed to have:

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

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

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

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

SECTION 1003. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 1004. EFFECTIVE DATE. This [Act] takes effect ...

SECTION 1005. SAVINGS AND TRANSITIONAL PROVISIONS.