

**Comparison between the Non-Bank Funds Transfer Group Model Act
Regulating Money Transmitters and the President's Commission on Model State
Drug Laws Model Money Transmitter Licensing and Regulation Act***

	Non-Bank Funds Transfer Group Act	President's Commission Act
<i>Scope</i>	<p>Section 2, 3(A)</p> <p>Money Transmitters</p> <p>Activity covered:</p> <ul style="list-style-type: none"> - the sale or issuance of payment instruments - receiving money for transmission or transmitting money within the United States or to locations abroad 	<p>Sections 4(k), 5</p> <p>Money transmitters, check cashers and foreign currency exchangers who "conduct the business" of:</p> <ul style="list-style-type: none"> - receiving money for transmission or transmitting money - exchanging payment instruments and/or money into any form of payment instruments or money - receiving money from obligors for the purpose of paying that obligor's bills
<i>Exemptions</i>	<p>Section 4</p> <ul style="list-style-type: none"> - United States (including department, agency or instrumentality) - United States Post Office - the State of any political subdivisions - Banks and other types of financial institutions - The provision of electronic transfer of benefits for federal, state, or county governmental agency - Authorized delegates acting within the scope of their contract with a licensee 	<p>Section 6</p> <ul style="list-style-type: none"> - United States (including any department or agency) - The State or any political subdivisions - banks and other types of financial institutions - check cashers or foreign currency exchangers who engage in activity covered by the Act only as authorized delegates - licensed consumer lenders - escrow companies - trust companies - mortgage bankers - collection agencies
<i>Permissible Investments</i>	<p>Sections 3(O), 6</p> <ul style="list-style-type: none"> - cash - certificates of deposit or other debt obligations of a financial institution, either domestic or foreign - bills of exchange or time drafts drawn on and accepted by a commercial bank which are eligible for purchase by member banks of the Federal Reserve system - any investment bearing a rating of one of the three highest grades as defined by nationally-recognized rating organization - shares in money market mutual fund, 	<p>Sections 4(n), 14</p> <ul style="list-style-type: none"> - money on hand or on deposit in name of licensee - certificates of deposit or other debt instruments of a bank, savings and loan association, or credit union - bills of exchange or other time drafts drawn on and accepted by a bank that are eligible for purchase by member banks of the Federal Reserve system - commercial paper bearing a rating of one of the three highest grades as defined by nationally-recognized rating organization - securities, obligations, etc. whose

* The information contained in these charts is merely a summary of the provisions of both model acts. The chart does not reflect the precise language of the two model acts and does not purport to be an accurate representation of the language or meaning of either text. Rather, the chart is simply a reference tool to be used in comparing both models.

	<p>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 composed of one or more permissible investments</p> <ul style="list-style-type: none"> - any demand borrowing agreement made to a corporation or subsidiary of a corporation whose capital stock is listed on a national exchange - receivables due to a licensee from its authorized delegates which are not past due or doubtful of collection 	<p>payment is guaranteed by the general taxing authority of the issuer, of the United States, any State or by any local government entity, or political subdivision or instrumentality of govt. entity that bear a rating of one of the 3 highest grades by a nationally recognized investment services organization engaged in rating state and municipal issues for min. of 5 years</p> <ul style="list-style-type: none"> - stocks, bonds, etc or corporation organized in any U.S. State that bear rating of 1 of 3 highest grades by nationally recognized investment service org that has rated corp. securities for min. of 5 years - any receivable due a licensee from its delegate pursuant to contract if those receivables do not exceed 80% of total amount past due or doubtful of collection
<p><i>License application (only major differences in info required are noted)</i></p>	<p>Section 7</p> <ul style="list-style-type: none"> - Applicant's history of (as distinct from individual persons) material litigation and criminal convictions for past 5 years - Sample authorized delegate contract <p>For corporate applicants:</p> <ul style="list-style-type: none"> - Information on executive officers, key shareholders (name, business and residential addresses, material litigation and criminal convictions) for 5 years - Copies of most recent audited financial statement and for immed. preceding 2 year period - Copies of all filings made with the SEC <p>For non-corporate applicants</p> <ul style="list-style-type: none"> - Name, business and residence address, personal financial statement and employment history for each principal of the applicant for past 5 years and employment history for past 5 years of any other person in charge of applicant's activities - history of material litigation and criminal convictions for 5 year period for each individual having ownership interest or who exercises supervisory responsibility - copies of most recent audited financial statement and for immed. preceding 2 year period 	<p>Sections 7 and 8</p> <p>For each executive officers, director and branch manager or individual controlling person (unless the controlling person is a publicly traded company on a recognized national exchange with assets in excess of \$500 million):</p> <ul style="list-style-type: none"> - statement of personal history which includes name, aliases, record of criminal convictions and significant litigation history (for past 10 years), report of any bankruptcies filed, - alien registration information, - photographs and fingerprints taken by state law enforcement agency if requested* <p>*fingerprints and photographs are submitted to appropriate state agency for criminal background check</p> <ul style="list-style-type: none"> - An identification statement for each branch manager including (among other information): <ul style="list-style-type: none"> - record of criminal convictions (excluding traffic convictions) - alien registration information - employment history and residence addresses for past 15 years <p>Other information:</p> <ul style="list-style-type: none"> - a financial statement audited by a licensed independent CPA - copies of any financial statement filed with the Sec in the past 3 years

<i>Bond/Security Device And Net worth requirements</i>	<p>Section 8</p> <p>Minimum \$50,000 – if more than one location or business conducted through authorized delegates the amount of security device increase by \$10,000 per location to maximum of \$250,000</p>	<p>Sections 8, 10</p> <p>\$300,000 unless the licensee engages solely in check cashing or foreign currency exchange (where no bond is required).</p> <p>Amount is increased by \$25,000 per authorized delegate to a max. of \$1 million.</p> <p>Licensee must have net worth of at least \$500,000 in order to do business through delegates plus \$25,000 for each authorized delegate not to exceed \$1 million (according to financial statements calculated in accordance with GAAP and audited by a licensed independent CPA)</p>
<i>Issuance of License</i>	<p>Section 10</p> <p>Superintendent must approve or deny application within 120 days from date a complete application is submitted. Period can be extended by written consent of the applicant. Superintendent required to notify applicant when application deemed complete</p> <p>In absence of approval, denial or extension, application deemed approved at end of 120-day period</p> <p>Applicants who receive denial may contest denial within 30 days from receipt of written notice</p>	<p>Section 9</p> <p>Same as Non-Bank Funds Transmitters Draft except for the hearing provisions which vary slightly</p>
<i>Renewal Procedures</i>	<p>Section 11</p> <p>Annual Renewal</p> <p>Superintendent sends renewal form to licensee 3 months prior to renewal date</p> <p>Information to be included in renewal report:</p> <ul style="list-style-type: none"> - copy of most recent audited consolidated annual financial statement - for most recent quarter for which data is available (no more than 120 days prior to renewal date), number of payment instruments sold by licensee in the State, dollar amount and dollar amount outstanding - list of permissible investments - list of locations where business regulated by the Act is conducted by 	<p>Section 9</p> <p>Licensees need to pay renewal fee on or before 1st date of month selected by superintendent as renewal month.</p> <p>The contents of the renewal report to be prescribed by rule.</p> <p>A license for which no renewal fee or report is received as of the specified renewal date is automatically suspended</p> <p>A licensee may renew a suspended license not later than the first of the following month by paying the renewal fee plus \$100 for each day that the licensee is late with filing the report of paying the fee.</p>

	<p>licensee or authorized delegate</p> <p>If licensee does not file a renewal report or pay renewal fee and has not been given an extension – licensee is notified in writing and a hearing is scheduled. Licensee must show cause as to why its license should not be suspended ending compliance with renewal requirements</p>	
<i>Branch office licenses</i>	No provisions	<p>Section 9</p> <p>If a licensee maintains one or more locations in the State in addition to its principal place of business, that are not under the control of authorized delegates, the license must obtain separate branch office licenses for each of those locations.</p>
<i>Change of control</i>	<p>Sections 3(F), 3(G), 13</p> <p>Control is defined as “<u>ownership of, or the power to vote twenty-five</u> percent or more of the outstanding voting securities of a licensee or controlling person.” Licensee required to provide notice of change in control within 15 days after the change or acquisition (Notice after the fact)</p>	<p>Sections 4(e), 4(f), 18</p> <p>Control is defined as “<u>ownership of fifteen percent</u> or more of a licensee or controlling person, or <u>the power to vote fifteen percent</u> or more of the outstanding voting securities of a licensee or controlling person”</p> <p>Direct or indirect acquisition of control requires prior written approval of the superintendent</p> <p>Grounds for denial include:</p> <ul style="list-style-type: none"> - acquisition contrary to law, will jeopardize the financial condition of the licensee or public interests - the competence, experience and integrity of person who seeks to control the licensee (or officers , directors and controlling persons of same) indicate that it is not in the public interest to permit acquisition <p>Special treatment (exemptions) for certain methods of acquisition (e.g., by inheritance)</p>
<i>Examinations</i>	<p>Section 14</p> <p>Examination without prior notice only if superintendent has a reasonable basis to believe that the licensee or its authorized delegate is in noncompliance with provisions of the Act.</p>	<p>Section 15</p> <p>For purposes of enforcing the Act, the superintendent and the attorney general are given free access to offices, places of business and files of licensee or authorized delegates</p>
<i>Maintenance of Records</i>	<p>Section 15</p> <p>Specified records to be kept for period of 3 years. Records may be kept out of State as long as they are accessible to superintendent on 7 days written notice</p>	<p>Section 15</p> <p>Each licensee must keep records for at least 5 years after making final entry on a transaction</p>

		<p>For each authorized delegate, the licensee shall maintain records that demonstrate that the licensee conducted a reasonable background investigation – such records must also be preserved for 5 years after most recent designation as a delegate</p> <p>If records are maintained out of state, must be available at the superintendent's office not more than 5 business days after demand issued.</p>
<i>Confidentiality</i>	<p>Section 16</p> <p>Confidential licensee information may be released to representatives of state or federal agencies that state in writing and under oath that they will maintain confidentiality of information if:</p> <ul style="list-style-type: none"> i) the licensee provides consent prior to release; or ii) the superintendent finds that release is reasonably necessary for protection of public and in the interests of justice AND licensee is given prior notice of release 	<p>Section 24</p> <p>Confidential licensee information may be released to:</p> <ul style="list-style-type: none"> i) representatives of federal agencies insuring accounts in the financial institution ii) representatives of state or federal agencies and foreign countries having reg. Authority over the financial institution iii) the state attorney general iv) federal, state or county grand jury (in response to a lawful subpoena) v) the auditor general of the state for purposes of conducting required audits
<i>Suspension of Revocation of Licenses</i>	<p>Section 17</p> <p>Requires notice and hearing. Similar provisions in both Acts.</p>	<p>Section 11</p> <p>Similar provisions in both Acts, but President's Commission Draft includes a few more grounds for license suspension nor revocation including:</p> <ul style="list-style-type: none"> i) an authorized delegate has violated any provision of the Model Money Laundering Act or has violated any rule or regulation adopted pursuant to the Act or superintendent's order <u>as a result of a course of a negligent failure to supervise or as a result of willful misconduct of the licensee</u> ii) licensee fails to pay a judgment entered in favor of a claimant, plaintiff or creditor arising out of licensee's business regulated under the Act within 30 days after the judgment is final iii) licensee has been convicted in any state of a felony of any crime of breach of trust or dishonesty iv) the licensee has exhibited a pattern of failure or refusal to promptly pay lawful and enforceable obligations on payment instruments or

		transmissions of money
<i>Authorized Delegates</i>	<p>Sections 18, 19, 20</p> <p>Licensees must enter into express written contracts with authorized delegates</p> <p>Special provisions:</p> <p>Failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of authorized delegate to licensee for three times the licensee's actual damages.</p> <p>Authorized delegate is deemed to consent to superintendent's inspection with or without prior notice of its books and records when superintendent has reasonable basis to believe that licensee or authorized delegate is in noncompliance with the Ac</p> <p>Superintendent may revoke or suspend authorized delegates status if the delegate:</p> <ul style="list-style-type: none"> i) violates any provision of section 20 of the Act or rule, regulation or order ii) has engaged in any unsafe or unsound act with respect to business of selling or issuing payment instruments of the licensee or the business of money transmission iii) has made or caused to be made in any application or report filed with the superintendent or in any proceeding before the superintendent, any statement which was at the time and under the circumstances, false or misleading with respect to any material fact ,or has omitted to state or report any material fact <p>Delegate may apply to modify or rescind revocation or suspension order</p>	<p>Section 10</p> <p>Contract between licensee and authorized delegate shall contain a copy of the Act as an appendix.</p> <p>The superintendent may issue an order to cease and desist against the license or its authorized delegate if:</p> <ul style="list-style-type: none"> i) the authorized delegate has violated, is violating or is about to violate any applicable, rule or regulation or order ii) the authorized delegate has failed to cooperate with an examination or investigation by the superintendent or the attorney general iii) the competence experience, integrity of the authorized delegate or controlling person of the delegate indicates that it would not be in the public interest to permit that person to participate in the licensee's business iv) the financial condition of the authorized delegate might jeopardize the interests of the public v) the authorized delegate has engaged in, is engaging in or is about to engage in any unsafe, or unsound act or practice or transaction which constitutes a violation of any rule or any order

<i>Hearings</i>	<p>Section 22</p> <p>Provisions of uniform APA apply to any hearing</p>	<p>Section 12</p> <p>No license may be suspended or revoked except after a hearing. The superintendent shall also hold a hearing when requested by an applicant whose application for license has been denied</p> <p>Superintendent shall give the licensee or applicant min. of 10 days written notice of time and place of hearing by registered or certified mail.</p> <p>Any order suspending, revoking or denying a license shall state the grounds and is not effective until 10 days after written notice has been sent by registered or certified mail to last known address</p> <p>Any hearing required by this sect conducted on the record</p> <p>Superintendent granted subpoena powers to compel production of physical items and witnesses</p> <p>Licensee may seek court review of superintendent's findings and order</p>
<i>Civil Penalties</i>	<p>Section 23</p> <p>If, after notice and hearing, superintendent finds that person s intentionally violated the Act, or any rule adopted under the Act, the superintendent may order the person to pay a civil penalty not to exceed \$1,000 for each violation or in the case of a continuing violation \$1,000 for each day that the violation continues.</p> <p>No proceeding initiated and no penalty shall be assessed until after such person is notified in writing of the violation and is afforded a reasonable period of time to correct the violation (and fails to do so)</p>	<p>Section 23</p> <p>Any person who knowingly violates any provision of the Act shall be assessed a civil penalty in an amount equal to the gross business conducted in connection with the violation plus the state's costs and expenses of the investigation and prosecution, including reasonably attorney's fees</p>
<i>Enforcement Provisions</i>	<p>Section 24</p> <p>If it appears to the superintendent that any person has committed or is about to commit a violation of the Act or of any rule or order, the superintendent may apply to relevant court for order enjoining a person from violating the Act</p> <p>The Superintendent may also enter into consent orders with any person</p>	<p>Section 19</p> <p>Injunctive relief provision very similar to Non-Bank Funds Transfer Draft</p>
<i>Criminal Penalties</i>	<p>Section 25</p> <p><u>Misdemeanor:</u> Knowing and willful violation of any provision for the Act for</p>	<p>Section 22</p> <p><u>Felony:</u> Violation of any provision of the Act (either directly or indirectly) for</p>

	<p>which a penalty is not prescribed</p> <p><u>Felony:</u> Knowing and willfully making a material, false statement in any document filed or required to be filed with the intend to deceive the recipient of the document</p> <p><u>Felony:</u> Knowingly and Willfully engaging in the business of money transmission without a license</p>	<p>which a different penalty is not specified, Each transaction in violation of the act and each day violating continues is a separate offense</p> <p><u>Felony:</u> Knowingly making a false statement, misrepresentation or false certification in any application, financial statement, account record, customer receipt , report, or other document filed or required to be filed under this ac or who knowingly makes any false entry or omits a material entry onto any such document</p> <p><u>Felony:</u> Refusal to permit any lawful investigation by the superintendent or attorney general</p>
--	---	--

Note: The President's Commission Act has a companion act known as the Model Financial Transaction Reporting Act which requires money transmitters to file federal currency transaction reports and other anti-money laundering reports. A copy of this act has also been provided as part of the materials in preparation for the March 1999 Drafting Committee meeting.