

DRAFT

FOR DISCUSSION ONLY

**UNIFORM NONDEPOSITORY PROVIDERS OF
FINANCIAL SERVICES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

SEPTEMBER, 1998

**UNIFORM NONDEPOSITORY PROVIDERS OF
FINANCIAL SERVICES ACT**

With Notes

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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FINANCIAL SERVICES ACT

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1 **PART 1.**

2 **GENERAL PROVISIONS.**

3 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the
4 Nondepository Providers Act.

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

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

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

11 SUBPARAGRAPH (2) ALTERNATIVE 1

12 (2) "Authorized delegate" means an entity designated by the
13 licensee under this [Act] to sell or issue payment instruments,
14 to transmit funds, cash checks, sell or exchange currency, or
15 sell, issue, or redeem stored value products on behalf of a
16 licensee.

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

18 **Reporter's Note:** It is important to clearly define the outlets
19 through which money service businesses conduct their business.
20 This definition will help to define the legal relationship
21 between money service businesses and those outlets. The Money
22 Transmitters Regulators' Association Model Legislation Outline
23 ("Model Legislation Outline") uses the term "authorized agent" as
24 an alternative to authorized delegate. The Financial Crimes
25 Enforcement Network of the United States Department of Treasury
26 ("FinCEN") in its recent proposed rulemaking concerning money
27 service businesses uses the term "agent" for those same entities.
28 In its comments, FinCEN notes that "Treasury intends that the
29 concept of 'agent' for the list requirement should be as broad as
30 the common law of agency would allow, that is, it would extent to
31 any relationship that would be deemed to create obligations of
32 principal and agent at common law. Thus, for example, it is
33 likely that virtually all independent contractor arrangements for
34 money service businesses -- whatever their characterization for
35 employment law or income tax purposes -- would be treated as
36 creating principal-agent relationships to define the parameters
37 of the rights, obligations and direct and derivative liabilities

1 of the parties. See Restatement (Second) of Agency Sections 2©
2 and 14N." 62 Fed. Reg. 27895. Finally, the Non-Bank Funds
3 Transmitters Group has suggested another alternative, "money
4 transmitter outlet" to refer to independently owned sales
5 outlets. The definition of money transmitter outlet defines the
6 entity as "a person, whether or not licensed or required to be
7 licensed, who is engaged in the business of transferring funds
8 through a money transmitter even if incidental to another
9 business."

10 SUBPARAGRAPH (2) ALTERNATIVE 2

11 (2) "Agent" means a person whom the licensee appoints as its
12 agent with authority to conduct money service business activities
13 on behalf of the licensee.

14 **Source:** Modification of definition contained in Section 33043 of
15 the California Financial Code.

16 **Reporter's Note:** Rather than use the term delegate the committee
17 may consider using the term "agent" to signify the relationship
18 between a licensee and outlets that conduct business on behalf of
19 the licensee.

20 (3) "Check casher" means a person who, for compensation
21 sells currency in exchange for payment instruments received. The
22 term does not include a person who cashes checks in an amount
23 less than or equal to [\$500] for any person on a single day.

24 **Source:** Florida Money Transmitters Code Section 560.102 (with
25 modifications).

26 **Reporter's Note:** The \$1,000 per day threshold is an attempt to
27 exempt small businesses such as grocery stores and businesses
28 where check cashing is a service offered to customer incidental
29 to another business (e.g., hotels) from having to obtain a
30 license. FinCEN, in its proposed amendments to the Bank Secrecy
31 Act used a \$500 per day threshold. Many of the responses to
32 FinCEN's proposed rules advocated a higher dollar limit of \$1,000
33 or more. An alternative definition that is used in some of the
34 states excludes "persons engaged in check cashing [or currency
35 exchanging] which is incidental to the retail sale of goods and
36 services, whose compensation for cashing checks [or exchanging
37 currency] does not exceed 5 percent of the total gross income
38 from the retail sale of goods or services"

39 The Drafting Committee, at its February meeting, noted that the
40 \$1,000 threshold might be too high and would potentially exempt

1 too many money service businesses. Consequently, the recommended
2 threshold remains at \$500.

3 (4) "Check cashing" means exchanging for compensation a
4 payment instrument for money delivered to the presenter at the
5 time and place of the presentation.

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

8 **Reporter's Note:** It is important to have a definition for each of
9 the services that have been grouped under the general heading of
10 nondepository providers of financial services.

11 (5) "Check issuer" means a person who engages in the
12 business of issuing payment instruments and who is responsible
13 for payment on the instruments, other than a person who issues
14 payment instruments in an amount less than \$500 in currency or
15 monetary or other negotiable instrument to any person on any day.

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

19 (6) "Check seller" means a person who engages in the
20 business of selling payment instruments issued by another person,
21 even if incidental to another business.

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

26 **Reporter's Note:** An alternative term is "Payment Instrument
27 Seller."

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

32 **Source:** New.

33 **Reporter's Note:** This definition is derived from A Commercial
34 Lawyer's Take on the Electronic Purse: An Analysis of Commercial
35 Law Issues Associated with Stored Value Cards and Electronic

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

16 (8) "Control" means ownership of, or the power to vote, 25%
17 or more of the outstanding voting securities of a licensee or
18 controlling person. The interests of any other person controlled
19 by that person are aggregated with that person's interest for the
20 purposes of determining the percentage of a licensee controlled
21 by a person.

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

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

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

28 (10) "Currency" means the coin and paper money of the United
29 States or of any other country that is designated as legal tender
30 and that circulates and is customarily used and accepted as a
31 medium of exchange in a foreign country.

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

33 (11) "Currency exchanger" means a person who exchanges, for
34 compensation, currency of the United States or a foreign
35 government to currency of another government.

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

2 (12) "Executive officer" means the licensee's president,
3 chairman of the executive committee, senior officer responsible
4 for the licensee's business, a chief financial officer, and any
5 other person who performs similar functions.

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

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

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

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

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

13 (15) "Location" means a place of business at which money
14 service business activity occurs.

15 **Source:** New.

16 (16) "Material litigation" means litigation that, according
17 to generally accepted accounting principles, is considered
18 significant to an applicant's or licensee's financial health, and
19 is referenced in that entity's annual audited financial
20 statements, reports to shareholders, or similar documents.

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

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

1 **Source:** Connecticut Negotiable Instruments, Check and Check
2 Cashing Services Act, Section 36a-580.

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

6 (18) "Money" means a medium of exchange that is authorized
7 or adopted by a domestic or foreign government [and includes a
8 monetary unit of account established by an intergovernmental
9 organization or by agreement between two or more nations].

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

11 PARAGRAPH (19) ALTERNATIVE 1

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

15 (A) currency dealer or exchanger;

16 (B) check issuer;

17 (C) check seller;

18 (D) check casher;

19 (E) money transmitter; or

20 (F) stored value provider.

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

33 PARAGRAPH (19) ALTERNATIVE 2

1 (19) "Money service business" means a person who is located
2 or doing business in this State, including a check casher, check
3 seller, money transmitter, and stored value provider, who does
4 any of the following:

5 (A) sells or issues payment instruments;

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

8 (C) engages in the business of exchanging payment
9 instruments or money into any form of money or payment
10 instrument;

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

14 **Source:** Model Money Transmitter Licensing and Regulation Act.

15 **Reporter's Note:** The Model Money Transmitter Licensing and
16 Regulating Act groups all money service businesses (except stored
17 value issuers or sellers) together as "money transmitters." The
18 current definition simply substitutes the term "money
19 transmitter" with "money service business." Subsection (E),
20 which included entities that meet the definition of a bank,
21 financial agency or financial institution as set forth in 31
22 U.S.C. Section 5312, was omitted from this draft by agreement of
23 the Drafting Committee.

24 PARAGRAPH (20) ALTERNATIVE 1

25 (20) "Money transmitter" means a person who engages in the
26 transmission of money by any means including transmissions within
27 this country or to or from locations outside this country by
28 payment instrument, wires, facsimile, electronic transfer, or
29 courier. The term does not include a clearinghouse or other
30 association of banks that effect transfers of funds between or
31 among banks through check clearing, wire transfer, automated
32 clearinghouse, or similar services.

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

9 **Reporter's Note:** Query to the Drafting Committee: Does the
10 current definition of money transmitter (and also the definition
11 of payment instrument defined below) include stored value
12 providers? (See the Reporter's Note included after Section 301)
13 At present, several states have amended their money transmission
14 legislation to include stored value providers including
15 Connecticut and West Virginia. Other states, such as Texas, have
16 included stored value providers by interpretation. West Virginia
17 defines "currency transmission" or "money transmission" to
18 include "the transmission of funds through the issuance and sale
19 of stored value cards which are intended for general acceptance
20 and use in commercial or consumer transactions." See WV ST.
21 Section 32A-2-1-

22 PARAGRAPH (20) ALTERNATIVE 2

23 (20) "Money transmitter" means a person who accepts currency
24 or funds, either directly or through an authorized delegate, and
25 transmits the currency or funds, or the value of currency or
26 funds, by a means through a financial agency or institution, a
27 Federal Reserve Bank, or other facility of the Board of Governors
28 of the Federal Reserve System, or an electronic funds transfer
29 network.

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

33 (21) "Outstanding payment instrument" means a payment
34 instrument issued by a licensee which has been sold in the United
35 States directly by the licensee or a payment instrument issued by
36 a licensee which has been sold by an authorized delegate of the
37 licensee in the United States, which has been reported to the

1 licensee has having been sold, and which has not yet been paid by
2 or for the licensee.

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

4 (22) "Payment instrument" means a check, draft, money order,
5 travelers check, or other instrument or written order for the
6 transmission or payment of money, sold or issued to one or more
7 persons, whether or not the instrument is negotiable. The term
8 does not include a credit card voucher, letter of credit, or any
9 instrument that is redeemable by the issuer in goods or services.

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

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

23 (23) "Person" means a individual, corporation, business
24 trust, estate, trust, partnership, limited liability company,
25 association, joint venture, [government; governmental
26 subdivision, agency, or instrumentality; public corporation] or
27 any other legal or commercial entity.

28 **Source:** USL Drafting Manual.

29 **Reporter's Note:** This is the Standard Conference formulation for
30 this definition.

31 (24) "Permissible investments" means the following:

1 (A) cash, certificates of deposit, or other debt
2 obligations of a financial institution either domestic or
3 foreign;

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

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

11 (D) investment securities that are obligations of the
12 United States, its agencies, or instrumentalities or obligations
13 which are guaranteed fully as to principal and interest of the
14 United States, or an obligation of a State, municipality, or any
15 political subdivision thereof;

16 (E) shares in a money market mutual fund, interest-
17 bearing bills or notes or bonds, debentures or stock traded on
18 nay national securities exchange or on a national over-the-
19 counter market, or mutual funds primarily composed of one or more
20 permissible investments as described in this section;

21 (F) a demand borrowing agreement made to a corporation
22 or a subsidiary of a corporation whose capital stock is listed on
23 a national exchange; and

24 (G) receivables that are due to a licensee from its
25 authorized delegates pursuant to a contract which are not past

1 due or doubtful of collection; or any other investments or
2 security device approved by the [superintendent].

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

4 **Reporter's Note:** It was previously noted by the Drafting
5 Committee that the investments listed under (f) and (g) may be
6 too risky to be included as permissible investments.

7 (26) "Remit" means either to make direct payment of the
8 funds to the licensee or its representatives authorized to
9 receive those funds, or to deposit the funds in a bank, credit
10 union, or savings and loan association, or other similar
11 financial institution in an account specified by the licensee.

12 (27) "Responsible individual" means an individual who is
13 employed by a licensee and who has principal active management
14 within this country or to or from locations outside the country
15 by payment instrument. wire, facsimile, or electronic transfer,
16 courier, or otherwise.

17 **Source:** Arizona Money Transmitter Act Section 6-1021.

18 **Reporter's Note:** Many states have incorporated some notion of a
19 "responsible" individual or controlling person, or money
20 transmitter affiliated party to indicate persons who have
21 oversight or managerial responsibility with respect to money
22 service businesses. A responsible individual is someone who has
23 an active role in management and operations as contrasted with a
24 controlling person or key shareholder that may or may not have
25 such a role.

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

30 **Source:** USL Drafting Manual.

31 **Reporter's Note:** This is standard Conference formulation.

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

8 **Source:** FinCEN proposed amendments to the Bank Secrecy Act
9 Regulations B Definition and Registration of Money Service
10 Businesses amending 31 C.F.R. Part 103.

11 **Reporter's Notes:** Most comments received in response to FinCEN's
12 proposed money service business rules suggest that stored value
13 products should be eliminated altogether from the definition of
14 money service businesses. The major reason is that these
15 products are very new and still changing rapidly. At the first
16 committee meeting, however, the Committee members observed that
17 it might be prudent to create a framework for regulation since it
18 would take some time before the draft act would be promulgated.
19 The comments that FinCEN received also suggested that closed-end
20 systems be excluded from a definition of stored value. This
21 would exclude private smart card and debit card systems such as
22 university debit cards or metro cards, etc. In the preamble to
23 the proposed rule, FinCEN states that it may be appropriate to
24 exclude closed system products that are limited to facilitating
25 small transactions (also known as "micro" transactions) FinCEN
26 also notes that "in a purely closed system, the stored value card
27 is accepted only by a single merchant or entity and operates as
28 prepayment for specific goods and services, such as public
29 transportation or telephone calls. . . ." See 62 Fed. Reg.
30 27894. The Federal Reserve Bank of New York has suggested that
31 the phrase "funds or monetary value" should be replaced with
32 "intangible entitlement to be paid" because the term "funds" may
33 give the impression that a stored value product has inherent
34 value whereas the product only has value if the issuer is credit
35 worthy.

36 The other major issue is at what dollar amount stored value
37 products should be excluded from licensing. Comments on FinCEN's
38 proposed rules suggest that only stored value cards that are over
39 \$500 in value should be included in the definition of money
40 service businesses. At the October drafting committee meeting,
41 there was much discussion of the issue of whether stored value
42 products would be created in the near future to carry sums over
43 \$500. Additionally, the Committee discussed whether smaller
44 denomination products might be purchased and used to launder

1 funds in the aggregate (e.g., a money launderer buys several
2 hundred phone cards). Alternatively, certain stored value
3 products may hold less than \$500 but can be reloaded several
4 times and thus exceed the \$500 threshold.

5 (30) "Stored value provider" means a person who engages in
6 the business of issuing, selling, or redeeming open-end stored
7 value products.

8 **Source:** New.

9 **Reporter's Note:** The scope of regulation for stored value
10 products needs to be clearly defined. As discussed above (under
11 the definitions of payment instrument and money transmitter),
12 states such as West Virginia and Connecticut have already
13 included stored value within the scope of their money
14 transmission statutes.

15 (31) ["Superintendent"] means the [State superintendent of
16 Banks or other Senior State regulator charged with the regulation
17 of money service businesses.]

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

19 **Reporter's Note:** States use different regulatory bodies to
20 supervise the conduct of money service businesses. In some
21 states, the superintendent of banking is vested with this
22 responsibility. In other jurisdictions, it is the state
23 securities commissioner.

24 (32) "Traveler's check" means an instrument identified as
25 traveler's check on its face or commonly recognized as a
26 traveler's check and issued in a money multiple of United States
27 of foreign currency with a provision for a specimen signature of
28 the purchaser to be completed at the time of purchase and a
29 countersignature of the purchaser to be completed at the time of
30 negotiation.

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

32 (33) "Unsafe or Unsound practice" means any practice or
33 conduct which is contrary to generally-accepted standards

1 applicable to a specific money transmitter, or a violation of any
2 prior order of an appropriate regulatory agency, which practice
3 or conduct, or violation creates the likelihood of material loss,
4 insolvency, or dissipation of assets of the money transmitter or
5 otherwise materially prejudices the interests of its customers.
6 In making this determination, the department may consider the
7 size and condition of the money service business, the magnitude
8 of the loss, the gravity of the violation, and the prior conduct
9 of the person or business involved.

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

11 **Reporter's Note:** During its annual meeting in July 1998, the
12 Money Transmitter Regulators Association ("MTRA") noted that
13 state regulators needed regulatory authority with respect to the
14 unsafe or unsound practices of money service businesses.

15 **PART 2.**

16 **SCOPE, EXCEPTIONS AND EXCLUSIONS.**

17 **SECTION 201. SCOPE.** Except as otherwise provided in
18 Section 203, this [Act] applies to money service businesses.

19 **SECTION 202. SUPERVISORY POWERS OF [SUPERINTENDENT].**

20 Consistent with this [Act] the [superintendent] has supervision
21 over all money service businesses and their authorized delegates.

22 **Source:** Florida Money Transmitters Code Section 560.105.

23 **Reporter's Note:** Observers have suggested that an alternative to
24 multi-state supervision would be a home state/host state
25 licensing regime.

26 **SECTION 203. EXCLUSIONS.** This [Act] does not apply to:

- 27 (1) the United States or any department, agency, or
28 instrumentality thereof;
- 29 (2) the United States Post Office;
- 30 (3) this State or any political subdivision thereof;

1 (4) a bank, bank holding company, credit union, building and
2 loan association, savings and loan association, savings bank, or
3 mutual bank, offices of an international banking corporation,
4 Bank Service Act corporation or Edge Act or agreement corporation
5 organized under the laws of any State or the United States which
6 do not issue or sell payment instruments through an authorized
7 delegate who is not such an entity;

8 (5) the provision of electronic funds transfer of government
9 benefits for a federal, State, county, or governmental agency, by
10 a contractor for and on behalf of the United States, or a
11 department, agency, or instrumentality thereof, or a State or
12 political subdivisions;

13 (6) a board of trade designated as a contract market under
14 the Commodity Exchange Act, and a person who in the ordinary
15 course of business provides clearance and settlement services for
16 a board of trade;

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

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

23 (9) any payment systems operator that provides processing,
24 clearing and/or settlement services, between or among persons
25 exempt under this section or licensees, in connection with wire
26 transfers, credit card transactions, debit card transactions,

1 stored value transactions; automated clearing house transfers, or
2 similar funds transfers;

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

6 (11) reserved for future use.

7 **Source:** Model Money Transmitter Licensing and Regulation Act
8 (with modifications).

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

14 Proposed exclusions involving boards of trade were submitted
15 to FinCEN by various clearing organizations who collectively
16 several of the largest commodities exchanges and
17 commodities/options clearing organizations. In a letter dated
18 October 8, 1997, these organizations recommended that FinCEN
19 change the proposed definition of money service business to
20 exclude regulated entities that are already subject to regulation
21 by the SEC and the CFTC.

22 This draft omits reference to "businesses where sale of
23 alcohol beverages and food are equal to or greater than fifty
24 (50) percent of the total annual gross sales." The Drafting
25 Committee believed that this exclusion was far too general to be
26 adopted.

27 A new exclusion has been included under subsection (9) for
28 payment systems operators who provide clearing and/or settlement
29 services. This proposed exemption responds to the comments of
30 observers who note that the provision of those services is
31 distinct from the issuing or selling of payment instruments or
32 stored value products.

33 **SECTION 204. LICENSE REQUIREMENT.**

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

1 (b) A person who is not licensed under this [Act] or who is
2 not an authorized delegate of the licensee with respect to those
3 activities is presumed to be engaged in a business that is
4 regulated by this [Act] and that requires a license if the person
5 advertises, solicits, or holds himself or herself out as a money
6 service business and engages in money service business
7 activities.

8 (c) A person who engages in money service business
9 activities regulated in this [Act] only as an authorized delegate
10 of a licensee and acts solely within the scope of a contract
11 between the authorized delegate and the licensee is not required
12 to apply for a license. A person who is an authorized delegate
13 but who also engages in a money service business activity other
14 than as an authorized delegate must apply for a license under
15 part 2 or part 3 of this [Act].

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

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

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

30 PART 3.

31 LICENSING OF MONEY TRANSMITTERS, CHECK SELLERS, CHECK ISSUERS 32 [AND STORED VALUE PROVIDERS].

1 **SECTION 301. APPLICATION FOR LICENSE.**

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

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

12 (c) A person applying for a license under this part must do
13 so in writing, under oath, and in the form prescribed by the
14 [superintendent]. The application shall set forth such
15 information as the [superintendent] reasonably requires,
16 including but not limited to:

17 (1) the name and address of the applicant, including
18 any fictitious or trade names used by the applicant in the
19 conduct of its business;

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

21 (3) a description of them activities conducted by the
22 applicant, the applicant's history of operations, and the
23 business activities in which the applicant seeks to engage in
24 this State;

25 (4) a list of the applicant's proposed authorized
26 delegates, including the location or locations in its State in

1 which the applicant and its authorized delegates propose to
2 conduct money transmission activities;

3 (5) a sample form authorized delegate contract, if
4 applicable; sample form of payment instrument, if applicable.

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

8 (7) documents confirming that the net worth and bonding
9 requirements set forth in section have or will be satisfied.

10 (d) If the applicant is a corporation, the applicant shall
11 also provide such information as the [superintendent] requires,
12 including, but not limited to:

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

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

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

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

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

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

7 (7) copies of the applicant's unconsolidated unaudited
8 financial statements for the current year, if available, and if
9 available, for the preceding [2] year period; and

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

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

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

19 (2) the name, business and residential addresses,
20 personal financial statements and employment history for the past
21 [5] years for each individual having a controlling ownership
22 interest in the applicant, and each responsible person;

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

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

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

7 **Source:** Arizona Money Transmitter Law Section 6-1203; Model Money
8 Transmitter Licensing and Regulation Act Section 7; Florida Money
9 Transmitter Code Section 560.205.

10 **Reporter's Notes: Selected Issue:** Should the Draft NDP Act
11 include separate licensing regimes for money transmitters and
12 check sellers, and stored value providers (as one group) and
13 check cashers and currency exchangers (as a separate group). At
14 the February Drafting Committee meeting, the Drafting Committee
15 decided to create separate licensing, net worth and bonding
16 requirements for both categories of money service businesses. It
17 was felt that check cashers and currency exchangers posed less
18 safety and soundness concerns because customers were provided
19 with cash immediately. Additionally, observers stated that check
20 cashers are typically subject to minimal net worth requirements
21 in states where they are regulated.

22 As set forth in Parts 2 and 3, separate licensing,
23 recordkeeping and net worth requirements have been established
24 for money transmitters and for check cashers/foreign currency
25 exchanges. The superintendent's supervisory and enforcement
26 powers, however, are the same for all money service businesses.
27 This is the approach taken by several states including Florida
28 and Georgia. This is to promote the other main goal of the Draft
29 NDP Act which is to create an appropriate regulatory framework to
30 deter and eliminate the use of money service businesses as
31 potential vehicles for money laundering. The licensing
32 application is the first point at which the state may protect the
33 public from permitting entry by those persons who would bring
34 discredit on the industry and the first source of information for
35 investigators and regulators in the event that there is future
36 misconduct by the licensee.

37 **Selected Issue:** Should stored value providers be required to
38 obtain a state license? The Committee will need to decide
39 whether stored value products (with the exclusion of closed
40 stored value net works) be treated as payment instruments. If
41 so, stored value providers will fall within the definition of
42 money transmitters. In 1998, Connecticut enacted the Act
43 Concerning Electronic Payment Instruments and Currency and
44 Foreign Transactions Reporting. This act amended existing money

1 transmission legislation such that stored value products
2 (referred to as "electronic payment instruments") are treated as
3 payment instruments. Furthermore, issuers of such payment
4 instruments are subject to licensing and regulation in
5 Connecticut. See CT. Legis 98-192 cited in 1998 Conn. Legis.
6 Serv. P.A. 98-192 (S.S.B. 230) (West). West Virginia also adopted
7 new legislation, designed to amend its current money transmission
8 legislation. West Virginia's legislation includes stored value
9 within the definition of money transmission. 998 West Virginia
10 Laws Ch. 73 (H.B. 4591). As in Connecticut, this triggers
11 licensing and other requirements for stored value providers.
12 Texas has also interpreted its sale of checks statute to apply to
13 smart cards issued by non-banks for us in open networks. See
14 Remarks of Catherine A. Ghigieri, Texas Department of Banking to
15 the PULSE EFT Assoc. Member Conference (October 11, 1996) located
16 at www.banking.state.tx.us/exec/speech10a.

17 **SECTION 302. BOND AND NET WORTH REQUIREMENTS.**

18 SUBSECTIONS (a) AND (b) ALTERNATIVE 1

19 (a) Each application under this part must be accompanied by
20 a surety bond, irrevocable letter of credit, or other similar
21 security device acceptable to the [superintendent] in the amount
22 of [\$50,000].

23 (b) If the applicant proposes to engage in business under
24 this [Act] at more than one location, through authorized
25 delegates or otherwise, the amount of the security device is
26 increased by [\$10,000] per location, up to a maximum of
27 [\$250,000]. The security device shall be in a form satisfactory
28 to the [superintendent] and shall run to the State for the
29 benefit of any claimants against the licensee to secure the
30 faithful performance of the obligations of the licensee with
31 respect to the receipt, handling, transmission, and payment of
32 money in connection with the sale and issuance of payment
33 instruments and the transmission of money.

34 SUBSECTIONS (a) and (b) ALTERNATIVE 2

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

4 (b) The bond shall be in the amount of [\$25,000] for a
5 licensee with five or fewer authorized delegates and locations;
6 [\$100,000] for a licensee with more than five but fewer than 21
7 authorized delegates and locations, to a maximum of [\$250,000]
8 and an additional [\$5,000] for each authorized delegate in excess
9 of 200 authorized delegates and locations, to a maximum of
10 [\$500,000]

11 **Source:** Model Money Transmitter Licensing and Regulation Act
12 Section 8.

13 **Reporter's Note:** At present, money service businesses that engage
14 solely in check cashing or currency dealing and exchange do not
15 have to post bond or a security device. Alternative subsections
16 (a) and (b) are derived mainly from the Model Money Transmitter
17 Licensing and Regulation Act attempts to provide a uniform
18 standard for all money service businesses. An alternative would
19 be to create different security requirements based on the number
20 of locations or authorized delegates, which the licensee utilizes
21 within a state.

22 (c) In the case of a bond, the aggregate liability of the
23 surety shall not exceed the principal sum of the bond. Claimants
24 against the licensee or the authorized delegates may bring suit
25 directly on the security device or the [superintendent] may bring
26 suit on behalf of the claimants. The bond is conditioned on the
27 compliance of the licensee, including its directors, officers,
28 authorized delegate, and employees, with this [Act]. The bond
29 shall be payable to any person injured by the wrongful act,
30 default, fraud, or misrepresentation of the licensee, his or her
31 authorized delegates or employees, or to the State for the

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

4 (d) In the case of an irrevocable letter of credit, the
5 letter of credit must run to the State, for the benefit of the
6 [superintendent] and for the benefit of all persons injured by
7 the wrongful act, omission, default, fraud, or misrepresentation
8 by a licensee in the conduct of its activity as a licensee.
9 Draws upon an irrevocable letter of credit must be available by
10 sight drafts in amounts determined by the [superintendent] up to
11 the aggregate amount of the irrevocable letter of credit.

12 (e) The security device shall remain in effect until
13 cancellation, which may occur only after [30] day written notice
14 to the [superintendent]. Cancellation shall not affect any
15 liability incurred during this period.

16 (f) The security device shall remain in place for no longer
17 than [5] years after the licensee ceases money service operations
18 in this State. However, the [superintendent] may permit the
19 security device to be reduced or eliminated before that time to
20 the extent that the amount of the licensee's payment instruments
21 outstanding in this State are reduced. The superintendent may
22 permit a licensee to substitute a letter of credit or other form
23 of security device acceptable to the [superintendent] for the
24 security device in place at the time the licensee ceases money
25 service business activities in this State.

26 **Source:** Model Act Regulating Money Transmitters Section 8;
27 Delaware Code, Chapter 27, Section 2714.

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

4 (g) In lieu of the security device prescribed in this
5 section, an applicant for a license or a licensee may deposit
6 with the [superintendent] cash, or alternatives to cash
7 acceptable to the [superintendent], in the amount of the required
8 security device. The principal amount of the deposit may be
9 released to the applicant for a license or licensee only upon
10 written authorization of the [superintendent] or on the order of
11 a court of competent jurisdiction.

12 **Source:** Arizona Money Transmitter Act Section 6-1205; Model Money
13 Transmitter Licensing and Regulation Act Section 8.

14 **Reporter's Note:** Bonding or net worth requirements are safety and
15 soundness measures designed to protect the public but also to
16 deter companies that have questionable solvency or business
17 practices from entering the market. The bond requirement serves a
18 barrier to entry for unstable companies. Alternatives, however,
19 are provided to the bond requirement in the form of cash or cash
20 alternatives. Licensees may also be permitted to deposit
21 specified liquid assets in the amount of the bond. The Committee
22 will need to strike a balance between the goals of safety and
23 soundness and also providing open access to businesses whom wish
24 to enter the money service market.

25 **SECTION 303. ISSUANCE OF LICENSE.**

26 (a) Upon the filing of a complete application under parts 2
27 of this [Act] the [superintendent] shall investigate the
28 financial condition and responsibility, financial and business
29 experience, character, and general fitness of the applicant. The
30 [superintendent] may conduct an on-site investigation of the
31 applicant, the reasonable cost, which shall be borne by the
32 applicant. The [superintendent] may issue a license to an

1 applicant if the [superintendent] finds that all of the following
2 conditions are met:

3 (1) the appellant has complied with section 301 and 302
4 of the [Act].

5 (2) the competence and experience of the officers,
6 directors, and controlling persons, and any proposed management
7 personnel indicate that it is in the interest of the public to
8 permit such person to participate in the activities of the
9 licensee; and

10 (3) the applicant has paid the required license fee.

11 (b) The [superintendent] shall approve or deny an
12 application for an original license within [120] days after the
13 date an application is filed and is complete. The superintendent
14 may extend this period for good cause. The [superintendent]
15 shall notify the applicant of the date on which the application
16 is determined to be complete. In the absence of approval or
17 denial of the application within [120] days after the date an
18 application is complete or any extended period ends, the
19 application is considered approved. If the application is
20 considered approved, the [superintendent] shall issue the license
21 effective as of the first business day after the [120] day
22 period.

23 (c) Any applicant that is denied a license by the
24 [superintendent] under part 2 may request a hearing within [30]
25 days of receipt of written notice of the denial.

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

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

11 SECTION 303 ALTERNATIVE 1.

12 **SECTION 303. LICENSE RENEWAL.**

13 (a) The [superintendent] shall, by rule, establish an annual
14 fee for renewal of a license under this [Act].

15 (b) The renewal fee shall be accompanied by a report, in a
16 form prescribed by [the superintendent], which form shall be sent
17 by the [superintendent] to each licensee no later than three
18 months immediately proceeding the date established by the
19 [superintendent] for license renewal. The licensee must include
20 the following in its annual renewal report:

21 (1) a copy of its most recent audited consolidated
22 annual financial statement, or in the case of a licensee that is
23 a wholly-owned subsidiary of another corporation, the
24 consolidated audited annual financial statement of the parent
25 corporation or the licensee's annual audited financial statement;

26 (2) the number of payment instruments sold by the
27 licensee in this State, the dollar amount of those instruments,
28 and the dollar amount of those instruments currently outstanding
29 for the most recent quarter for which data is available before
30 the date of filing of the renewal application, but in no event
31 more than [120] days before the renewal date;

1 (3) any material changes to any information submitted
2 by the licensee on its original license application which have
3 not previously been reported to the [superintendent] on any other
4 report required to be filed under this [Act];

5 (4) a list of the licensee's permissible investments,
6 if applicable; and

7 (5) a list of the locations within this State at which
8 business regulated by this [Act] is being conducted by either the
9 licensee or its authorized delegate.

10 (c) A licensee that has not filed a renewal report or paid
11 its renewal fee by the renewal filing deadline and has not been
12 granted an extension of time to do so by the [superintendent]
13 shall be notified in writing by the [superintendent] that a
14 hearing is scheduled at which time the licensee will be required
15 to show cause why its license should not be suspended pending
16 compliance with these requirements.

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

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

23 **SECTION 305. LICENSE FEE.**

24 (a) Each application for a license must be accompanied by an
25 application fee of [\$1,000] and a license fee of [\$3,000]. The
26 license fee must be refunded if the application is denied. No
27 application fee is refunded.

1 **Source:** Model Money Transmitter Licensing and Regulation Action
2 Section 8.

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

7 **SECTION 306. NET WORTH.** A licensee must maintain a net
8 worth that of [\$100,000] plus [\$10,000] for each location or
9 authorized delegate to a maximum of [\$500,000].

10 **Source:** Model Money Transmitter Licensing and Regulation Act
11 Section 8.

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

20 **PART 4.**

21 **LICENSING OF CHECK CASHERS AND CURRENCY EXCHANGERS.**

22 **SECTION 401. APPLICATION FOR LICENSE.**

23 (a) No person shall engage in or in any manner advertise the
24 business of cashing payment instruments or the exchanging of
25 currency without first obtaining a license under the provisions
26 of this part.

27 (b) A person licensed pursuant to this part may cash payment
28 instruments or exchange currency. A person registered under this
29 part is prohibited from engaging directly in money transmission
30 but that person is not prohibited from acting as an authorized
31 delegate with a person licensed under part 2.

1 (c) Each license application shall be in writing and under
2 oath to the [superintendent in such form as the [superintendent]
3 may prescribe. The application shall include the following:

4 (1) the legal name and residential and business
5 addresses of the applicant, if the applicant is a natural person,
6 or if the applicant is a partnership, association or corporation,
7 the name of every partner, executive officer or director;

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

10 (3) the complete address of any other locations at
11 which the applicant proposes to engage in check cashing or
12 currency exchange;

13 (4) documents confirming that the net worth set forth
14 in section 404 has or will be satisfied; and

15 (5) other information as the department may reasonably
16 require with respect to the applicant. The [superintendent],
17 however may not require more information than specified in Part 2
18 of this [Act].

19 **Source:** Florida Money Transmitters Code Sections 560.304 and 305.
20 **Reporter's Note:** At the February Drafting meeting, observers
21 noted that check cashers should be treated differently than money
22 transmitters with respect to licensing, bonding net worth in
23 particular. Check cashers and currency exchangers provide
24 customers with funds immediately and therefore do not need the
25 same type of bond or security devices. Existing state
26 legislation makes a distinction between check cashers and money
27 transmitters with respect to information provided to regulators
28 (e.g., audited versus unaudited financial statements) and the level
29 of bond and net worth required for check cashiers. The Drafting
30 Committee decided to include separate licensing provisions in
31 this draft as an alternative to a unified licensing system as
32 contained in the February draft. Currency exchanges have also
33 been included in this section. As stated previously, Florida and
34 Maine are examples of states that have grouped check cashers and

1 currency exchangers together for purposes of licensing
2 requirements.

3 **SECTION 402. ISSUANCE OF LICENSE.**

4 (a) Upon the filing of a complete application under part 3
5 of this [Act] the [superintendent] shall investigate the
6 financial condition and responsibility, financial and business
7 experience, character, and general fitness of the applicant. The
8 [superintendent] may conduct an on-site investigation of the
9 applicant, the reasonable cost which shall be borne by the
10 applicant. The [superintendent] may issue a license to an
11 applicant if the [superintendent] finds that all of the following
12 conditions are met:

13 (1) the appellant has complied with section 401 and 405
14 of the [Act].

15 (2) the competence and experience of the officers,
16 directors, and controlling persons, and any proposed management
17 personnel indicate that it is in the interest of the public to
18 permit that person to participate in the activities of the
19 licensee; and

20 (3) the applicant has paid the required license fee.

21 (b) The [superintendent] shall approve or deny an
22 application for an original license within [120] days after the
23 date an application is filed and is complete. The superintendent
24 may extend this period upon a showing of good cause. The
25 [superintendent] shall notify the applicant of the date on which
26 the application is determined to be complete. In the absence of

1 approval or denial of the application within [120] days after the
2 date an application is complete or any extended period ends, the
3 application is considered approved. If the application is
4 considered approved, the [superintendent] shall issue the license
5 effective as of the first business day after the [120] day
6 period.

7 (c) Any applicant that is denied a license by the
8 [superintendent] under part 3 may request a hearing within [30]
9 days of receipt of written notice if the denial.

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

12 **Reporter's Note:** At the February Drafting Committee meeting, the
13 Committee inquired as to whether states had mandatory time frames
14 in which the regulator must respond to license applications. The
15 MTRA representative supplied the Committee with sample statutory
16 provisions, which included mandatory time frames for response to
17 a license application. In Tennessee, the time period is 180 days
18 rather than 120. The MTRA Model Legislation Outline recommends
19 an 120-day time period.

20 **SECTION 403. LICENSE RENEWAL.**

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

23 (b) The renewal fee shall be accompanied by a report, in a
24 form prescribed by [the superintendent], which form shall be sent
25 by the [superintendent] to each licensee no later than three
26 months immediately proceeding the date established by the
27 [superintendent] for license renewal. The licensee must include
28 the following in its annual renewal report:

29 (1) any material changes to any information submitted
30 by the licensee on its original license application which have

1 not previously been reported to the [superintendent] on any other
2 report required to be filed under this [Act];

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

5 (3) a list of the locations within this State at which
6 either the licensee or its authorized delegate is conducting
7 business regulated by this [Act].

8 (c) A licensee that has not filed a renewal report or paid
9 its renewal fee by the renewal filing deadline and has not been
10 granted an extension of time to do so by the [superintendent]
11 shall be notified in writing by the [superintendent] that a
12 hearing is scheduled at which time the licensee will be required
13 to show cause why its license should not be suspended pending
14 compliance with these requirements,

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

17 **Reporter's Note:** The license renewal provisions are slightly
18 different for check cashers and currency exchangers (as opposed
19 to Part 2 licensees). The requirement of audited consolidated
20 financial statements and also information concerning payment
21 instruments sold has been omitted. It is anticipated, however,
22 that the appropriate state regulator would prescribe what type of
23 information should be contained in a renewal report.

24 **SECTION 404. LICENSE FEE.**

25 (a) Each application for a license must be accompanied by an
26 application fee of [\$1,000] and a license fee of [\$3,000]. The
27 license fee must be refunded if the application is denied. No
28 application fee is refunded.

29 **Source:** Model Money Transmitter Licensing and Regulation Action
30 Section 8.

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

5 **SECTION 405. NET WORTH.** A licensee must maintain a net
6 worth of at least [\$10,000] in liquid assets for each location at
7 which currency exchange or check cashing takes place and at least
8 [\$2,500] for each limited facility location specified in the
9 application

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

11 **Reporter's Note:** As observers noted at the February meeting,
12 check cashers are required to have much lower net worth and bond
13 requirements. This is due primarily to the fact that check
14 cashers and currency exchangers provide customers with funds
15 immediately whereas money transmitters and payment instrument
16 sellers. Check cashers are required to maintain anywhere from
17 \$5,000 in liquid assets per location up to \$50,000 (New Jersey).
18 Other states also require that the check casher maintain an
19 "adequate" bond (e.g., Massachusetts).

20 **PART 5.**

21 **AUTHORIZED DELEGATES.**

22 **SECTION 501. RELATIONSHIP BETWEEN LICENSEES AND AUTHORIZED**
23 **DELEGATES.**

24 (a) Each contract between a licensee and an authorized
25 delegate shall require the authorized delegate to operate in full
26 compliance with the law and shall contain an appendix copy of
27 this [Act]. The licensee shall provide each authorized delegate
28 with written policies and procedures sufficient to permit
29 compliance with this [Act] and rules adopted under this [Act].
30 The licensee shall promptly update its policies and procedures to
31 permit compliance with those laws and rules.

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

4 (c) Upon the suspension or revocation of a license or the
5 failure of a licensee to renew its license, the [superintendent]
6 shall notify all authorized delegates of the licensee who are on
7 record with the [superintendent] of the [superintendent's]
8 action. On receipt of this notice, an authorized delegate shall
9 immediately cease to operate as a delegate of the licensee.

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

12 **Reporter's Note:** Section 501 (formerly Section 401 in the
13 February Draft) contains substantial revisions, the following
14 provisions were omitted:

- 15 •requirement that the licensee maintain a specific net worth for
16 each authorized delegate which it uses;
- 17 •the requirement that the superintendent must grant written
18 authorization for the use of sub-delegates;
- 19 •the imposition of treble damages on an authorized delegate for
20 failure to remit all money owing to the licensee in a timely
21 fashion; and
- 22 •the statement that an authorized delegate is no liable for any
23 obligation imposed on a licensee with respect to business for
24 which it is a delegate.

25 **SECTION 502. SCOPE OF AUTHORIZED DELEGATE ACTIVITY.**

26 (a) An authorized delegate may not conduct business for
27 which a license is required under this [Act] and which is outside
28 the scope of activity conferred in the contract between the
29 authorized delegate and the licensee. An authorized delegate of
30 a licensee holds in trust for the benefit of the licensee all
31 moneys received from the sale and delivery of the licensee's
32 payment instruments or moneys received for transmission.

1 (b) An authorized delegate consents to the
2 [superintendent's] inspection, with or without prior notice to
3 the licensee or authorized delegates, of the books and records of
4 authorized delegates of the licensee.

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

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

11 **SECTION 503. PROHIBITED TRANSACTIONS.** A person may not
12 engage in conduct requiring a license under this [Act] as an
13 authorized delegate of a principal if the principal is not
14 licensed under this [Act]. A person who does so shall be
15 considered to be the principal seller, issuer, or actor rather
16 than an authorized delegate and is liable to the holder,
17 remitter, or customer to the same extent as if the person were
18 the principal.

19 **Source:** Arizona Money Transmitter Act Section, Model Money
20 Transmitter Licensing and Regulation Act Section 10.

21 **Reporter's Note:** It is important to clearly delineate the rights
22 and duties of a licensee and his or her authorized delegate.
23 This section defines the relationship between the parties and
24 includes the imposition of a trust for the benefit of the
25 licensee for moneys received by the delegate from the sale of the
26 licensee's products or services.

27 **PART 6.**
28 **EXAMINATIONS, REPORTS AND RECORDS.**

29 **SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.**

30 (a) The [superintendent] may conduct an annual on-site
31 examination of a licensee or any of its authorized delegates upon
32 [45] days written notice to the licensee. However, if the

1 [superintendent] has reason to believe that a licensee or
2 authorized delegate is engaging in an unsafe or unsound practice,
3 pr has violated or is violating a provision of the [Act], the
4 [superintendent] may examine the licensee or its authorized
5 delegate without providing advance notice.

6 (b) If the [superintendent] concludes that an on-site
7 examination is necessary, the licensee shall pay all reasonably
8 incurred costs of the examination. If the [superintendent]
9 determines, based on the licensee's financial statements and past
10 history of operations in State that an on-site examination is
11 unnecessary, the on-site examination may be waived.

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

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

17 SECTION 602. JOINT EXAMINATIONS.

18 (a) On-site examinations of records prescribed in this [Act]
19 may be conducted in conjunction with representatives of other
20 state agencies or agencies of another state or of the federal
21 government as determined by the [superintendent]. In lieu of an
22 on-site examination, the [superintendent] may accept the
23 examination report of an agency of this State or of another State
24 or of the federal government or a report prepared by an
25 independent licensed certified public accountant. Joint
26 examination or acceptance of an examination report shall not be
27 considered a waiver of examination assessment provided by law.
28 Joint reports and reports accepted under this subsection are

1 considered official reports of the [superintendent] for all
2 purposes.

3 (b) Information obtained during examinations under this
4 [Act] shall be disclosed only as provided in Section 608.

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

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

10
11 **SECTION 603. REPORTS.**

12 (a) A licensee shall file with the [superintendent] within
13 [45] days after the end of each [fiscal quarter] a consolidated
14 financial statement including a balance sheet, income and expense
15 statements, and a list of all authorized delegates, branch
16 managers, responsible individuals, and locations within this
17 State which have been added or terminated by the licensee within
18 the [fiscal quarter]. The licensee shall include the name and
19 street address of each location and authorized delegate.

20 (b) A licensee shall file with the [superintendent] within
21 [15] days after its occurrence a report of any of the following
22 events:

23 (1) the licensee's filing for bankruptcy or
24 reorganization;

25 (2) the institution of license revocation proceedings
26 in any State in which the licensee engages in business or is
27 licensed;

28 (3) a felony indictment or conviction of the licensee
29 or of an officer, director, controlling person, branch manager,

1 responsible individual, or authorized delegate related to
2 licensed activity or involving conduct defined as money
3 laundering or specified unlawful activity.

4 (c) A licensee who fails to file any report required by this
5 section before the time designated for filing the report, or
6 fails to include any prescribed information in the report, shall
7 pay a penalty of [\$100] for each day that the report is delayed
8 or incomplete, unless the [superintendent], for good cause shown,
9 reduces the amount to be paid, or unless the time to file the
10 report was extended in writing by the [superintendent].

11 **Source:** Model Money Transmitter Licensing and Regulation Act
12 Section 13.

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

24 **SECTION 604. CHANGE OF CONTROL.**

25 (a) Any person or group of persons who proposes to purchase
26 or acquire a controlling interest in a money service business
27 shall provide written notice to the [superintendent].

28 (1) A licensee whose stock is traded on an organized
29 stock exchange shall provide the [superintendent] with written
30 notice within [15] days after knowledge of a change in control.

1 (2) A licensee whose stock is not publicly traded shall
2 provide the [superintendent] with written notice not less than
3 [30] days before the date of the proposed change of control.

4 (b) After review of the written notice, the [superintendent]
5 may require the licensee to provide additional information
6 concerning the proposed new owners or key shareholders of the
7 licensee. This information shall be of the same type required by
8 the licensee as part of its original license application or
9 renewal application.

10 (c) The [superintendent] may deny the person or group of
11 persons who have acquired or who propose to acquire control of
12 the licensee, if after investigation, the [superintendent]
13 determines that the person or group of persons does not have the
14 competence, experience or integrity or financial capability to
15 control or operate the licensee in a legal and proper manner and
16 that the interests of the public may be jeopardized by the change
17 in ownership.

18 (d) This section does not apply to any of the following
19 persons or transactions:

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

23 (2) a person who acts as a proxy for the sole purpose
24 of voting at a designated meeting of the security holders of a
25 licensee or controlling persons of a licensee;

1 (3) a person who acquires control of a licensee or
2 controlling person of a licensee by devise or descent;

3 (4) a person who acquires control of a licensee or
4 controlling person as a personal representative, custodial,
5 guardian, conservator, trustee, or any other officer appointed by
6 a court of competent jurisdiction or by operation of law;

7 (5) a pledge of a voting security of a licensee or
8 controlling person who does not have the right, as pledge to vote
9 that security; or

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

12 (e) Before filing an application for approval to acquire
13 control, a person may request in writing a determination from the
14 [superintendent] as to whether that person will be considered in
15 control upon consummation of a proposed transaction. If the
16 [superintendent] determines that the person will not be a
17 controlling person within the meaning of this section, the
18 [superintendent] shall enter an order to that effect and the
19 proposed transaction is not subject to the requirements of this
20 section.

21 **Source:** Florida Money Transmitters Code Section 560.127 (with
22 modifications).

23 **Reporter's Note:** In February, the Drafting Committee objected to
24 the previous section dealing with change in control. The
25 previous provision required prior written approval from the
26 superintendent before acquisition of a money service business.
27 The current provision requires notice rather than prior approval
28 in all instances.

29 SECTION 605 ALTERNATIVE 1

30 **SECTION 605. BOOKS AND RECORDS.**

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

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

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

10 **Source:** Florida money Transmitters Code Section 560.310.

11 **Reporter's Note:** Most check cashing and currency exchange
12 legislation simply states that the licensee must maintain books
13 and records as required by regulation. Unlike money transmission
14 statutes, the actual details of the recordkeeping are done
15 through regulation. For check cashers, minimum books and records
16 often include:

17 •a daily record of checks cashed, including for personal checks
18 in excess of \$500 and government or business checks in excess of
19 \$1,000;

20 •the date of the transaction, the date of the check, the check
21 number, the name and location of the payor bank;

22 •the name of the drawer of the check, the name (and
23 identification) of the person negotiating the check; and

24 •the amount of the check and the fee charged for cashing the
25 check.

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

32 SECTION 605 ALTERNATIVE 2.

33 **SECTION 605. BOOKS AND RECORDS.**

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

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

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

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

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

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

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

24 **SECTION 606. TRANSACTION RECORDS.**

25 (a) A payment instrument sold by a licensee directly or
26 indirectly through an authorized delegate must bear the name of
27 the licensee and a unique consecutive number clearly stamped or
28 imprinted on the payment instrument.

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

16 Source: Model Money Transmitter Licensing and Regulation Act
17 Section 15.

18 **SECTION 607. MONEY LAUNDERING REPORTS.**

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

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

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

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

8 **Reporter's Note:** Query: Should the Draft NDP Act be more explicit
9 and detailed concerning the types of transactions for which money
10 service businesses must file and maintain reports for state
11 regulators (as opposed to federal reports)? Approximately 10
12 states require that money service businesses comply with all
13 federal and state money laundering and currency transaction
14 reporting laws. State laws typically replicate the federal law
15 and require that cash transactions in excess of \$10,000 be
16 reported to a state authority as well as to Treasury. Most of
17 the state reporting legislation does not specifically address
18 money service businesses (but may apply to money service
19 businesses by implication). Several states including Colorado,
20 Connecticut, Idaho, Indiana and Oklahoma require financial
21 institutions to file suspicious activity reports concurrently
22 with federal and state authorities. Arizona has its own
23 suspicious activity form for financial institutions. Suspected
24 money laundering activities are reported to Arizona's Attorney
25 General on a one-page form. Georgia states that each financial
26 institution shall keep a record of currency transactions in
27 excess of \$10,000 and that those reports shall be filed with this
28 State within 15 days of the transaction. The Georgia Department
29 of Banking and Finance, however "may promulgate regulations that
30 permit currency transaction reports filed by financial
31 institutions with federal agencies pursuant to requirements of
32 federal law to satisfy the currency transaction filing
33 requirements . . . provided that the department . . . will have
34 access to the currency transaction reports filed with the federal
35 agencies." Georgia Financial Institutions Code Section 7-1-912.

36 **Query:** Should the Draft NDP Act also include specific
37 prohibitions against evading currency-reporting requirements
38 (under either federal or state law) and also against the
39 structuring of transactions? (i.e., the division of a transaction
40 that would trigger currency reporting or Bank Secrecy Act
41 reporting requirements into two or more transactions that are not
42 reportable). Some states explicitly prohibit such actions as part
43 of their criminal code or as part of their money transmission
44 regulations. Georgia, for example, prohibits the evasion of
45 reporting requirements and also structuring.

1 **SECTION 608. CONFIDENTIALITY OF RECORDS.**

2 (a) Except as otherwise provided in this [Act], the records
3 of the [superintendent] relating to licensees are not public
4 documents and are not open to inspection by the public. Neither
5 the [superintendent] nor any member of the [superintendent]'s
6 staff may disclose information obtained in the discharge of his
7 or her official duties to a person not connected with the [name
8 of appropriate state department or regulatory agency].

9 (b) The [superintendent] may disclose confidential
10 information pertaining to the licensee to the following persons:

11 (1) representatives of federal agencies insuring
12 accounts of the licensee;

13 (2) representatives of federal or State agencies and
14 foreign countries having regulatory or supervisory authority of
15 the activities of the licensee if those representatives are
16 permitted to and do, upon request of the [superintendent]
17 disclose similar information respecting those [licensees] under
18 their regulation or supervision or to those representatives who
19 state in writing under oath that they shall maintain the
20 confidentiality of that information.

21 (3) the attorney general of this State;

22 (4) to a federal, State or county grand jury in
23 response to a lawful subpoena; and

24 (5) to the [auditor general] of this state for the
25 purposes of conducting audits authorized by law.

26 (c) The [superintendent] may:

1 (1) disclose the fact of a licensee's filing of an
2 application with the [name of department] under this [Act], give
3 notice of a hearing, if any, regarding an application, and
4 announce his or her action on the application;

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

8 (3) prepare and circulate reports reflecting the assets
9 and liabilities of [licensees], including other information
10 considered pertinent to the purpose of each report for general
11 statistical information.

12 (d) This section does not prevent the disclosure of
13 information that is admissible in evidence in a civil or criminal
14 proceeding brought by or at the request of the [superintendent]
15 of this State to enforce or prosecute violations of this [Act] or
16 the rules or orders issued or promulgated under this [Act].

17 **Source:** Model Money Transmitter Licensing and Regulation Act
18 Section 24.

19 **PART 7.**

20 **PERMISSIBLE INVESTMENTS.**

21 **SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.**

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

24 (1) a market value computed in accordance with
25 generally accepted accounting principles of not less than the
26 aggregate amount of all of its outstanding payment instruments,
27 if the market value of these permissible investments is at least

1 95% of the net carrying value in accordance with generally-
2 accepted accounting principles; or

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

6 (b) Notwithstanding any other provision of this [Act], the
7 [superintendent], with respect to any particular licensees, may
8 limit the extent to which any class of permissible investments,
9 may be considered a permissible investment, except for money and
10 certificates of deposit. The [superintendent] may by rule
11 prescribe or by order allow other types of investments which the
12 [superintendent] determines to have substantially equivalent
13 safety as other permissible investments.

14 **Source:** Model Money Transmitter Licensing and Regulation Act
15 Section 14.

16 **PART 8.**

17 **ENFORCEMENT.**

18 **SECTION 8001. CEASE AND DESIST ORDERS; SUSPENSION AND** 19 **REVOCAION POWERS.**

20 (a) After notice and a hearing, the [superintendent] may
21 issue a cease and desist order or removal order, deny a license
22 application, suspend or revoke a license previously issued under
23 this [Act], or order a licensee to revoke the designation of an
24 authorized delegate whose conduct has contributed to the
25 following:

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

1 (2) the licensee engages in fraud, misrepresentation,
2 deceit, or gross negligence;

3 (3) an authorized delegate has violated the Bank
4 Secrecy Act or other State or federal anti-money laundering
5 statutes or has violated any rule adopted under this [Act] as a
6 result of the licensee's negligent failure to supervise or as a
7 result of the willful misconduct of the licensee;

8 (4) the licensee is insolvent or has suspended payment
9 of its obligations, has made an assignment for the benefit of its
10 creditors, or has admitted in writing its inability to pay its
11 debts as they become due;

12 (5) the licensee fails to remove an authorized delegate
13 after the [appropriate State agency] has issued and served upon
14 the licensee a final order setting forth a finding that the
15 authorized delegate has violated this [Act].

16 (6) the competence, experience, integrity, or overall
17 moral character of the licensee or authorized delegate or any
18 controlling persons of the licensee or authorized delegate
19 indicates that it is not in the public interest to permit that
20 person to participate in the money service business; or

21 (7) the licensee fails to make any report required by
22 this [Act].

23 **Source:** Florida Money Transmitters Code Section 560.11; Model
24 Money Transmitter Licensing and Regulation Act Sections 11 and
25 12.

26 **Reporter's Note:** Suspension and revocation of a license may only
27 occur after a hearing in accordance with the state's
28 administrative procedure act. Licensee violation of state money

1 laundering prohibitions is specified on the list, as is delegate
2 violations of money laundering prohibitions done "as a result of
3 a course of negligent failure to supervise or of the willful
4 misconduct of the licensee." A willful misconduct standard has
5 been chosen because a strict liability standard may result in
6 consequences disproportionate to the social harm involved from
7 the delegate's activity. Some states provide more detailed
8 standards for when a cease and desist order becomes effective.
9 The Texas Currency Exchange Transportation and Transmission
10 provisions of the Texas Finance Code provide that a cease and
11 desist order takes effect on issuance if the Banking Commissioner
12 finds a threat of immediate and irreparable harm to the license
13 holder or the public. If no immediate or irreparable harm is
14 found, the order is not effective before 10 days after the order
15 is received. The order must be served on the licensee, the
16 licensee's board of directors and any offending principal. Texas
17 Finance Code Section 153-407.

18 Other state laws enumerate separate and specific grounds for
19 the denial of a license or for revocation, suspension or
20 restriction of a previously granted license. Florida for
21 example, lists a material misstatement of fact in an initial or
22 renewal application, the loss of license in another jurisdiction
23 (due to fraud or dishonest dealing), criminal convictions
24 involving fraud or dishonest dealing as grounds for license
25 denial, suspension or non-renewal. See Florida Money Transmitters
26 Code Section 560.114(2) (a) - (c).

27 **SECTION 8002. AUTHORIZED DELEGATES; CEASE AND DESIST**
28 **ORDERS.**

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

35 (1) the authorized delegate is violating any applicable
36 law or any order of the [superintendent];

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

1 (3) the competence, experience, or integrity of the
2 authorized delegate or any controlling person of the authorized
3 delegate indicates that it is not in the public interest to
4 permit that person to participate in the money services business;

5 (4) the financial condition of the authorized delegate
6 jeopardizes the interests of the public in the conduct of money
7 service business; or

8 (5) the authorized delegate is engaging in any unsafe
9 or unsound practice.

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

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

18 **Reporter's Note:** Section 1002 and 1003 places responsibility on
19 the licensee for the conduct of the authorized delegate to the
20 extent that the licensee knew of the delegate's misconduct or
21 allowed it to continue. The committee needs to consider whether
22 scope of licensee liability and/or responsibility for authorized
23 delegate conduct needs to be extended to willful blindness or
24 recklessness. Additionally, the committee may consider further
25 defining how licensee should supervise authorized delegates.

26 **SECTION 8003. CONSENT ORDERS.**

27 (a) The [superintendent] may enter into consent orders at
28 any time with any person to resolve any matter arising under this
29 [Act]. A consent order must be signed by the person to whom it
30 is issued or a duly authorized representative, and must indicate
31 agreement with the terms contained therein. A consent order need

1 not constitute an admission by any person that this [Act], or any
2 rule or order has been violated.

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

4 **SECTION 8004. CIVIL PENALTIES.**

5 SUBSECTION (a) ALTERNATIVE 1

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

16 SUBSECTION (a) ALTERNATIVE 2

17 (a) A person who violates this [Act] may be assessed a civil
18 penalty in an amount equal to the gross business conducted in
19 connection with the violation plus the state's costs and expenses
20 for the investigation and prosecution of the matter, including
21 reasonable attorney's fees.

22 (b) The [superintendent] may impose a fine not to exceed
23 [\$1,000] per day for each day a person engages in money services
24 business activities without a license.

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

26 (c) The [superintendent] may bring an action in the [name of
27 appropriate court or adjudicatory body] in which a violation of

1 this section is alleged to have occurred or in any other county
2 in which venue is permitted under [reference to State venue
3 statutes and rules] in the same manner as the filing of other
4 civil actions.

5 **Source:** Model Money Transmitter Licensing and Regulation Act
6 Section 23.

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

10 **SECTION 8005. CRIMINAL PENALTIES.**

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

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

24 (c) A person who refuses to permit a lawful examination or
25 investigation by the [superintendent] is guilty of a [reference
26 to state classification] felony.

1 (d) A person who knowingly and willfully engages in the
2 business of money transmission without a license is guilty of a
3 [reference to state classification] felony.

4 **Source:** Model Money Transmitter Licensing and Regulation Act
5 Section 22. Subsection(e) was added from the Main Act to Regulate
6 Money Transmitters and Amend Consumer Credit Laws, 32 MRSA
7 Section 6124(3).

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

12 **SECTION 8006. UNAUTHORIZED ACTIVITIES.**

13 (a) A person other than a licensee or authorized delegate
14 may not engage in money service business activities in this state
15 unless the person is exempted from the licensing requirements of
16 this [Act].

17 (b) No person shall act as an authorized delegate of a money
18 services business when the money service business is required to
19 obtain a license under this [Act] but has failed to do so. The
20 person becomes the principal and no longer merely acts as an
21 authorized delegate. The person is also liable to the holder or
22 remitter as a principal money transmitter.

23 (c) The superintendent may issue a complaint against any
24 person who engages in money service business activities without a
25 license and seek a cease and desist order. The [superintendent]
26 may also impose a civil money penalty under Section 8005.

27 **Source:** Florida Money Transmitters Code Section 560.125 (with
28 modifications).

29 **Reporter's Note:** The MTRA has observed that state regulators need
30 authority to deal with money service businesses that operate
31 without a license.

1 purpose of consumer inquiries. In lieu of a toll-free number,
2 the licensee or authorized delegate may provide the address and
3 telephone number of the [superintendent].

4 **Source:** Florida Money Transmitters Code Section 560.128

5 **Reporter's Note:** MTRA members suggested that the act should
6 include a provision for a toll-free number which consumers may
7 call. The Draft NDP Act does not address the regulation of
8 consumer fees for money services businesses (e.g., the fee for
9 cashing checks) because the scope of the act deals with the
10 licensing of money service businesses as it relates to the
11 prevention of money laundering. The Draft NDP Act therefore does
12 not address consumer issues.

13 **SECTION 1002. APPOINTMENT OF [SUPERINTENDENT] AS AGENT FOR**
14 **SERVICE OF PROCESS.**

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

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

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

24 (b) Within [] business days after service of process upon
25 the [superintendent], the [superintendent] shall transmit by
26 certified mail copies of all lawful process accepted by the
27 [superintendent] as an agent to that person at its last known
28 address. Service of process shall be considered complete []
29 business days after the [superintendent] deposits the copies of
30 the documents in the United States mail.

31 **Source:**

1 **SECTION 1003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

2 In applying and construing this [Act], consideration must be
3 given to the need to promote uniformity of the law with respect
4 to its subject matter among States that enact it.

5 **Source:** USL Drafting Manual.

6 **SECTION 1103. SEVERABILITY.** If any provision of this [Act]
7 or its application to any person or circumstance is held invalid,
8 the invalidity does not affect other provisions or applications
9 of this [Act] which can be given effect without the invalid
10 provision or application, and to this end the provisions of this
11 [Act] are severable.

12 **Source:** USL Drafting Manual.

13 **SECTION 1104. EFFECTIVE DATE.**

14 **Source:**

15 **SECTION 1105. SAVINGS AND TRANSITIONAL PROVISIONS.**

16 **Source:**