

1 (b) A person is engaged in providing money transmission if
2 the person provides those services to persons in the State, even
3 if the person providing services has no physical presence in the
4 State.

5 (c) If a licensee has a physical presence in the State,
6 the licensee may conduct its business at one or more locations,
7 directly or indirectly owned, or through one or more authorized
8 delegates, or both, pursuant to the single license granted to
9 the licensee.

10 **§ -4 Definitions.** For purposes of this chapter:

11 "Applicant" means a person filing an application for a
12 license under this chapter.

13 "Authorized delegate" means an entity designated by the
14 licensee under this chapter to sell or issue payment instruments
15 or engage in the business of transmitting money on behalf of a
16 licensee.

17 "Commissioner" means the commissioner of financial
18 institutions.

19 "Control" means ownership of, or the power to vote,
20 twenty-five per cent or more of the outstanding voting
21 securities of a licensee or controlling person. For purposes of
22 determining the percentage of a licensee controlled by any



1 person, there shall be aggregated with the controlling person's
2 interest the interest of any other person controlled by the
3 person, or by any spouse, parent, or child of the person.

4 "Controlling person" means any person in control of a
5 licensee.

6 "Division" means the division of financial institutions
7 within the department of commerce and consumer affairs.

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

16 "Executive officer" means a president, chairperson of an
17 executive committee, senior officer responsible for the
18 licensee's business, chief financial officer, or any other
19 person who performs similar functions related to the licensee.

20 "Key shareholder" means any person, or group of persons
21 acting in concert, who is the owner of twenty-five per cent or
22 more of any voting class of an applicant's stock.



1 "License" means a license under this chapter.

2 "Licensee" means a person licensed under this chapter.

3 "Material litigation" means any litigation that, according
4 to generally accepted accounting principles, is deemed
5 significant to an applicant's or licensee's financial health and
6 would be required to be referenced in the applicant's or
7 licensee's annual audited financial statements, report to
8 shareholders, or similar documents.

9 "Monetary value" means a medium of exchange, whether or not
10 redeemable in money.

11 "Money transmission" means to engage in the business of:

- 12 (1) Selling or issuing payment instruments; or
- 13 (2) Receiving money or monetary value for transmission to
14 a location within or outside the United States by any
15 and all means, including wire, facsimile, or
16 electronic transfer.

17 Money transmission does not apply to courier services.

18 "Outstanding payment instrument" means any payment
19 instrument issued by the licensee that has been sold in the
20 United States:

- 21 (1) Directly by the licensee; or



1 (2) By an authorized delegate of the licensee in the
2 United States, which has been reported to the licensee
3 as having been sold, and that has not yet been paid by
4 or for the licensee.

5 "Payment instrument" means any electronic or written check,
6 draft, money order, traveler's check, or other electronic or
7 written instrument or order for the transmission or payment of
8 money, sold or issued to one or more persons, whether or not the
9 instrument is negotiable. The term "payment instrument" does
10 not include any credit card voucher, any letter of credit, or
11 any instrument that is redeemable by the issuer in goods or
12 services.

13 "Permissible investments" means:

- 14 (1) Cash;
- 15 (2) Certificates of deposit or other debt obligations of a
16 financial institution, either domestic or foreign;
- 17 (3) Bills of exchange or time drafts drawn on and accepted
18 by a commercial bank, known as bankers' acceptances,
19 that are eligible for purchase by member banks of the
20 federal reserve system;



- 1 (4) Any investment bearing a rating of one of the three
2 highest grades as defined by a nationally recognized
3 organization that rates securities;
- 4 (5) Investment securities that are obligations of the
5 United States, its agencies, or its instrumentalities,
6 obligations that are guaranteed fully as to principal
7 and interest of the United States, or any obligations
8 of any state, municipality, or any political
9 subdivision thereof;
- 10 (6) Shares in a money market mutual fund, interest-bearing
11 bills, notes, or bonds, debentures or stock traded on
12 any national securities exchange or on a national
13 over-the-counter market, mutual funds primarily
14 composed of these securities, or a fund composed of
15 one or more permissible investments as set forth in
16 this subsection;
- 17 (7) Any demand borrowing agreement or agreements made with
18 a corporation or a subsidiary of a corporation whose
19 capital stock is listed on a national exchange;
- 20 (8) Receivables that are due to a licensee from its
21 authorized delegates pursuant to a contract under



1 section -21, that are not past due or doubtful of
2 collection; or

3 (9) Any other investments or security device approved by
4 the commissioner.

5 "Person" means any individual, partnership, limited
6 liability company, association, joint-stock association, trust,
7 or corporation.

8 "Remit" means:

9 (1) To make direct payment of the funds to the licensee or
10 its representatives authorized to receive those funds;
11 or

12 (2) To deposit the funds in a bank, credit union, savings
13 and loan association, savings bank, financial services
14 loan company, or other similar financial institution
15 in an account specified by the licensee.

16 "Stored value" means monetary value that is evidenced by an
17 electronic record.

18 **§ -5 Exclusions.** (a) This chapter shall not apply to:

19 (1) The United States or any department, agency, or
20 instrumentality thereof;

21 (2) The United States Postal Service;

22 (3) The State or any political subdivisions thereof;



1 (4) Banks, bank holding companies, credit unions, building
2 and loan associations, savings and loan associations,
3 savings banks, financial services loan companies, or
4 mutual banks organized under the laws of the United
5 States or any state, even if those entities act as
6 authorized delegates for licensees and provided that
7 they do not issue or sell payment instruments through
8 authorized delegates who are not banks, bank holding
9 companies, credit unions, building and loan
10 associations, savings and loan associations, savings
11 banks, financial services loan companies, or mutual
12 banks; and

13 (5) The electronic transfer of government benefits for any
14 federal, state, or county governmental agency as
15 defined in Federal Reserve Board Regulation E, by a
16 contractor for, and on behalf of the United States or
17 any department, agency, or instrumentality thereof, or
18 any state or any political subdivisions thereof.

19 (b) Authorized delegates of a licensee acting within the
20 scope of authority conferred by a written contract under section
21 -21 shall not be required to obtain a license pursuant to
22 this chapter.



1 **§ -6 License qualifications.** (a) Each licensee, at all
2 times, shall have a net worth of not less than \$1,000,
3 calculated in accordance with generally accepted accounting
4 principles.

5 (b) Each corporate applicant, at the time of filing an
6 application, and at all times after a license is issued, shall
7 be in good standing in the state of its incorporation. All
8 non-corporate applicants, at the time of filing an application
9 for a license under this chapter, and at all times after a
10 license is issued, shall be registered or qualified to do
11 business in the State.

12 **§ -7 Bond or other security device.** (a) Each
13 application for a license shall be accompanied by a surety bond,
14 irrevocable letter of credit, or other similar security device
15 acceptable to the commissioner in the amount of \$1,000. The
16 commissioner may increase the amount of the bond or security
17 device to a maximum of \$500,000 upon the basis of the impaired
18 financial condition of a licensee, as evidenced by a reduction
19 in net worth, financial losses, or other relevant criteria.

20 (b) The security device shall be in a form satisfactory to
21 the commissioner and shall run to the State for the benefit of
22 any claimants against the licensee to secure the faithful



1 performance of the obligations of the licensee relating to the
2 receipt, handling, transmission, and payment of money in
3 connection with the sale and issuance of payment instruments or
4 transmission of money. In the case of a bond, the aggregate
5 liability of the surety shall not exceed the principal sum of
6 the bond. Claimants against the licensee may bring suit
7 directly on the security device or the commissioner may bring
8 suit on behalf of claimants, either in one action or in
9 successive actions.

10 (c) In lieu of these security devices or of any portion of
11 the principal amount thereof, as required by this section, the
12 licensee may deposit with the commissioner, or with such banks
13 in this State as the licensee may designate and the commissioner
14 may approve, cash, interest-bearing stocks and bonds, notes,
15 debentures, or other obligations:

- 16 (1) Of the United States or any agency or instrumentality
17 thereof;
- 18 (2) Guaranteed by the United States;
- 19 (3) Of the State, a county, or instrumentality of the
20 State; or
- 21 (4) Guaranteed by the State,



1 in an aggregate amount based upon the principal amount or market
2 value, whichever is lower, of not less than the amount of the
3 security device or portion thereof.

4 (d) The securities or cash deposited pursuant to
5 subsection (c) shall secure the same obligations as would the
6 security device, but the depositor shall:

7 (1) Be entitled to receive all interest and dividends
8 thereon;

9 (2) Have the right, with the approval of the commissioner,
10 to substitute other securities for those deposited;
11 and

12 (3) Be required to substitute other securities for those
13 deposited upon a showing of good cause and written
14 order of the commissioner.

15 (e) The security device shall remain in effect until
16 cancellation, which may occur only after thirty days written
17 notice to the commissioner. Cancellation shall not affect any
18 liability incurred or accrued during the period.

19 (f) The security device shall remain in place for no
20 longer than five years after the licensee ceases money
21 transmission operations in the State. Notwithstanding this
22 provision, the commissioner may permit the security device to be



1 reduced or eliminated prior to that time to the extent that the
2 amount of the licensee's payment instruments outstanding in the
3 State are reduced. The commissioner may also permit a licensee
4 to substitute a letter of credit or other form of security
5 device acceptable to the commissioner for the security device in
6 place at the time the licensee ceases money transmission
7 operations in the State.

8 **§ -8 Permissible investments and statutory trust. (a)**

9 A licensee, at all times, shall possess permissible investments
10 having an aggregate market value, calculated in accordance with
11 generally accepted accounting principles, of not less than the
12 aggregate amount of all outstanding payment instruments issued
13 or sold by the licensee in the United States. This requirement
14 may be waived by the commissioner if the dollar volume of a
15 licensee's outstanding payment instruments does not exceed the
16 bond or other security devices posted by the licensee pursuant
17 to section -7.

18 (b) Permissible investments, even if commingled with other
19 assets of the licensee, shall be held in trust for the benefit
20 of the purchasers and holders of the licensee's outstanding
21 payment instruments in the event of the bankruptcy of the
22 licensee.



1 **§ -9 Application for license.** (a) An application for a
2 license under this chapter shall be made in writing, and in a
3 form prescribed by the commissioner. Each application shall
4 contain the following:

5 (1) For all applicants:

6 (A) The exact name of the applicant, any fictitious
7 or trade name used by the applicant in the
8 conduct of its business, the applicant's
9 principal address, and the location of the
10 applicant's business records;

11 (B) The history of the applicant's material
12 litigation and criminal convictions for the
13 five-year period prior to the date of the
14 application;

15 (C) A description of the business activities
16 conducted by the applicant and a history of
17 operations;

18 (D) A description of the business activities in which
19 the applicant seeks to engage within the State;

20 (E) A list identifying the applicant's proposed
21 authorized delegates in the State, if any, at the
22 time of the filing of the license application;



- 1 (F) A sample authorized delegate contract, if
- 2 applicable;
- 3 (G) A sample form of payment instrument, if
- 4 applicable;
- 5 (H) The locations where the applicant and its
- 6 authorized delegates, if any, propose to conduct
- 7 their licensed activities in the State; and
- 8 (I) The name and address of the clearing bank or
- 9 banks on which the applicant's payment
- 10 instruments will be drawn or through which
- 11 payment instruments will be payable;
- 12 (2) If the applicant is a corporation, the applicant shall
- 13 also provide:
- 14 (A) The date of the applicant's incorporation and
- 15 state of incorporation;
- 16 (B) A certificate of good standing from the state in
- 17 which the applicant was incorporated;
- 18 (C) A description of the corporate structure of the
- 19 applicant, including the identity of any parent
- 20 or subsidiary company of the applicant, and the
- 21 disclosure of whether any parent or subsidiary
- 22 company is publicly traded on any stock exchange;



- 1 (D) The name, business and residence address, and
2 employment history, for the past five years, of
3 the applicant's executive officers and the
4 officers or managers who will be in charge of the
5 applicant's activities to be licensed under this
6 chapter;
- 7 (E) The name, business and residence address, and
8 employment history of any key shareholder of the
9 applicant, for the period of five years before
10 the date of the application;
- 11 (F) For the five-year period prior to the date of the
12 application, the history of material litigation
13 involving, and criminal convictions of, every
14 executive officer or key shareholder of the
15 applicant;
- 16 (G) A copy of the applicant's most recent audited
17 financial statement, including balance sheets,
18 statements of income or loss, statements of
19 changes in shareholder equity and statement of
20 changes in financial position, and, if available,
21 the applicant's audited financial statements for
22 the preceding two-year period or, if the



1 applicant is a wholly owned subsidiary of another
2 corporation, either the parent corporation's
3 consolidated audited financial statements for the
4 current year and for the preceding two-year
5 period, or the parent corporation's Form 10-K
6 reports filed with the United States Securities
7 and Exchange Commission for the prior three years
8 in lieu of the applicant's financial statements,
9 or if the applicant is a wholly owned subsidiary
10 of a corporation having its principal place of
11 business outside the United States, similar
12 documentation filed with the parent corporation's
13 non-United States regulator; and

14 (H) Copies of all filings, if any, made by the
15 applicant with the United States Securities and
16 Exchange Commission, or with a similar regulator
17 in a country other than the United States, within
18 the year preceding the date of filing of the
19 application; and

20 (3) If the applicant is not a corporation, the applicant
21 shall also provide:



- 1 (A) The name, business and residence address,
2 personal financial statement, and employment
3 history, for the past five years, of each
4 principal of the applicant;
- 5 (B) The name, business and residence address, and
6 employment history, for the past five years, of
7 any other persons who will be in charge of the
8 applicant's activities to be licensed under this
9 chapter;
- 10 (C) The place and date of the applicant's
11 registration or qualification to do business in
12 this State;
- 13 (D) The history of material litigation and criminal
14 convictions for the five-year period before the
15 date of the application for each individual
16 having any ownership interest in the applicant
17 and each individual who exercises supervisory
18 responsibility over the applicant's activities;
19 and
- 20 (E) Copies of the applicant's audited financial
21 statements, including balance sheets, statements
22 of income or loss, and statements of changes in



1 financial position for the current year and, if
2 available, for the preceding two-year period.

3 (b) The commissioner, for good cause may:

4 (1) Waive any requirement of this section relating to any
5 license application; or

6 (2) Permit an applicant to submit substituted information
7 in its license application in lieu of the information
8 required by this section.

9 **§ -10 Application and license fees.** (a) Each
10 application shall be accompanied by:

11 (1) A non-refundable application fee in the amount of
12 \$1,000 plus \$100 for each additional location in the
13 State, not to exceed a maximum fee of \$4,000; and

14 (2) A license fee of \$500 plus \$100 for each additional
15 location in the State, not to exceed a maximum fee of
16 \$2,000.

17 (b) The license fee shall be refunded if the application
18 is denied.

19 **§ -11 Issuance of license.** (a) Upon the filing of a
20 complete application, the commissioner shall investigate the
21 financial condition and responsibility, financial and business
22 experience, character, and general fitness of the applicant.



1 The commissioner may conduct an on-site investigation of the
2 applicant, the reasonable cost of which shall be borne by the
3 applicant.

4 (b) If the commissioner finds that:

5 (1) The applicant's business will be conducted honestly,
6 fairly, and in a manner commanding the confidence and
7 trust of the community;

8 (2) The applicant has fulfilled the requirements imposed
9 by this chapter; and

10 (3) The applicant has paid the required license fee,
11 the commissioner shall issue a license to the applicant
12 authorizing the applicant to engage in the licensed activities
13 in the State for a term of one year. If these requirements have
14 not been met, the commissioner shall deny the application in
15 writing setting forth the reasons for the denial.

16 (c) Any applicant aggrieved by a denial issued by the
17 commissioner under this chapter may submit a request for a
18 contested case hearing in accordance with chapter 91.

19 **§ -12 Renewal of license and annual report.** (a) On or
20 before December 31 of each year, each licensee shall pay to the
21 commissioner an annual license fee of \$500, plus \$100 for each
22 authorized delegate, not to exceed an aggregate fee of \$2,000.



1 (b) The annual license fee shall be accompanied by a
2 report, in a form prescribed by the commissioner, which shall
3 include:

4 (1) A copy of the licensee's most recent audited annual
5 financial statement, including balance sheets,
6 statement of income or loss, statement of changes in
7 shareholder's equity, and statement of changes in
8 financial position or, if a licensee is a wholly owned
9 subsidiary of another corporation, the consolidated
10 audited annual financial statement of the parent
11 corporation in lieu of the licensee's audited annual
12 financial statement;

13 (2) For the most recent quarter for which data is
14 available prior to the date of the filing of the
15 renewal application, but in no event more than one
16 hundred twenty days prior to the renewal date, the
17 licensee shall provide the number of payment
18 instruments sold by the licensee in the State, the
19 dollar amount of those instruments, and the dollar
20 amounts of those instruments currently outstanding;

21 (3) Any material changes to any of the information
22 submitted by the licensee on its original application



1 that have not previously been reported to the
2 commissioner on any other report required to be filed
3 under this chapter;

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

5 (5) A list of the locations, if any, within this State
6 where business regulated by this chapter is being
7 conducted by either the licensee or the licensee's
8 authorized delegates.

9 (c) A licensee that has not filed a renewal report or paid
10 its annual license fee by the renewal filing deadline, and has
11 not been granted an extension of time to do so by the
12 commissioner, shall have its license suspended on the renewal
13 date. The licensee has thirty days after its license is
14 suspended to file a renewal report and pay the annual license
15 fee, plus \$100 for each business day after suspension that the
16 commissioner does not receive the renewal report and the annual
17 license fee. The commissioner, for good cause, may grant an
18 extension of the renewal date or reduce or suspend the \$100 per
19 day late filing fee.

20 § -13 **Licensee liability.** A licensee's responsibility
21 to any person for a money transmission conducted on that
22 person's behalf by the licensee or the licensee's authorized



1 delegate shall be limited to the amount of money transmitted,
2 the face amount, or the purchase amount of the payment
3 instrument.

4 **§ -14 Extraordinary reporting requirements.** Within
5 fifteen business days of the occurrence of any one of the events
6 listed below, a licensee shall file a written report with the
7 commissioner describing the event and its expected impact on the
8 licensee's activities in this State. These events are:

- 9 (1) Any material changes in information provided in a
10 licensee's application or renewal report;
- 11 (2) The filing for bankruptcy or reorganization by the
12 licensee;
- 13 (3) Revocation or suspension proceedings against the
14 licensee by any state or governmental authority
15 relating to the licensees' money transmission
16 activities;
- 17 (4) Any felony indictment of the licensee or any of its
18 key officers or directors related to money
19 transmission activities; or
- 20 (5) Any felony conviction of the licensee or any of its
21 key officers or directors related to money
22 transmission activities.



1 **§ -15 Changes in control of a licensee.** (a) A licensee
2 shall give the commissioner written notice of a proposed change
3 of control and request approval of the proposal.

4 (b) After review of a request for approval under
5 subsection (a), the commissioner may require the licensee to
6 provide additional information concerning the persons who are to
7 assume control of the licensee. The additional information
8 shall be limited to similar information required of the licensee
9 or persons in control of the licensee as part of its original
10 license or renewal application under sections -9 and -12.

11 (c) The commissioner shall approve a request for change of
12 control under subsection (a) if, after investigation, the
13 commissioner determines that the person or group of persons
14 requesting approval has the competence, experience, character,
15 and general fitness to control the licensee or person in control
16 of the licensee in a lawful and proper manner, and that the
17 interests of the public will not be jeopardized by the change of
18 control.

19 (d) The following persons are exempt from the requirements
20 of subsection (a), but the licensee regardless, shall notify the
21 commissioner of a change of control:



1 (1) A person who acts as a proxy for the sole purpose of
2 voting at a designated meeting of the security holders
3 or holders of voting interests of a licensee or person
4 in control of a licensee;

5 (2) A person who acquires control of a licensee by devise
6 or descent;

7 (3) A person who acquires control as a personal
8 representative, custodian, guardian, conservator,
9 trustee, or as an officer appointed by a court of
10 competent jurisdiction or by operation of law; or

11 (4) A person who the commissioner, by rule or order,
12 exempts in the public interest.

13 (e) Subsection (a) shall not apply to public offerings of
14 securities.

15 (f) Before filing a request for approval for a change in
16 control, a person may request in writing, a determination from
17 the commissioner as to whether the person would be considered a
18 person in control of a licensee upon consummation of a proposed
19 transaction. If the commissioner determines that the person
20 would not be a person in control of a licensee, the commissioner
21 shall enter an order to that effect and the proposed person and



1 transaction shall not be subject to the requirements of
2 subsections (a) through (c).

3 **§ -16 Money laundering reports.** (a) Every licensee and
4 its authorized delegates shall file with the commissioner all
5 reports relating to transactions in the State, as required by
6 federal recordkeeping and reporting requirements in Title 31
7 United States Code Section 5311 et seq., 31 Code of Federal
8 Regulations Part 103, Section 125, and other federal and state
9 laws pertaining to money laundering.

10 (b) The timely filing of a complete and accurate report
11 with the appropriate federal agency shall satisfy the
12 requirements of subsection (a), unless the commissioner notifies
13 the licensee that reports of this type are not being regularly
14 and comprehensively transmitted by the federal agency.

15 **§ -17 Examinations.** (a) The commissioner may conduct
16 an annual on site examination of a licensee upon sixty days
17 written notice to the licensee. The commissioner may examine a
18 licensee without prior notice if the commissioner has a
19 reasonable basis to believe that the licensee is not in
20 compliance with this chapter. When the commissioner concludes
21 that an on site examination of a licensee is necessary, the
22 licensee shall pay all reasonably incurred costs of the



1 examination. The on site examination may be conducted in
2 conjunction with examinations performed by representatives of
3 agencies of the federal government, or of another state or
4 states. The commissioner, in lieu of an on site examination,
5 may accept the examination report of the federal government, an
6 agency of another state, or an independent accounting firm.
7 Accepted reports are considered, for all purposes, an official
8 report of the commissioner. The licensee shall bear the cost of
9 reasonable expenses incurred by the division, agencies of
10 another state, or an independent licensed or certified public
11 accountant in conducting an examination or making a report.

12 (b) The commissioner may request financial data from a
13 licensee in addition to that required under section -12, or
14 conduct an on site examination of any authorized delegate or
15 location of a licensee within the State without prior notice to
16 the authorized delegate or licensee only if the commissioner has
17 a reasonable basis to believe that the licensee or authorized
18 delegate is not in compliance with this chapter. When the
19 commissioner examines an authorized delegate's operations, the
20 authorized delegate shall pay all reasonably incurred costs of
21 the examination. When the commissioner examines a licensee's



1 location within the State, the licensee shall pay all reasonably
2 incurred costs of the examination.

3 **§ -18 Maintenance of records.** (a) Each licensee shall
4 make, keep, preserve, and make available for inspection by the
5 commissioner the following books, accounts, and other records
6 for a period of three years:

- 7 (1) A record or records of each payment instrument;
- 8 (2) A general ledger containing all assets, liability,
9 capital, income, and expense accounts that shall be
10 posted at least monthly;
- 11 (3) Bank statements and bank reconciliation records;
- 12 (4) Records of outstanding payment instruments;
- 13 (5) Records of each payment instrument paid within the
14 three-year period;
- 15 (6) A list of the names and addresses of all of the
16 licensee's authorized delegates; and
- 17 (7) Any other records the commissioner reasonably requires
18 by rule adopted pursuant to chapter 91.

19 (b) Maintenance of documents in a photographic,
20 electronic, or other similar form shall comply with this
21 section.



1 (c) Records may be maintained at a location outside the
2 State; provided that these records are made accessible to the
3 commissioner within seven business days of receipt of a written
4 notice issued by the commissioner.

5 **§ -19 Confidentiality of records.** (a) The commissioner
6 and all employees, contractors, attorneys contracted or employed
7 by the State, and appointees of the division of financial
8 institutions shall not divulge or furnish any information in
9 their possession or obtained by them in the course of their
10 official duties to persons outside the division, except the
11 director of commerce and consumer affairs, or unless otherwise
12 permitted by this section or any other law regulating licensees
13 or authorized delegates, in which case the disclosure shall not
14 authorize or permit any further disclosure of the information.
15 The disclosures prohibited by this section shall include,
16 without limitation, information that is:

- 17 (1) Privileged or exempt from disclosure under any federal
18 or state law;
- 19 (2) Related to an examination performed by or on behalf of
20 the commissioner or contained in any report of
21 examination;



- 1 (3) Contained in any report submitted to, or for the use
2 of the commissioner, except for the nonproprietary
3 portions of applications;
- 4 (4) Related to the business, personal, or financial
5 affairs of any person and is furnished to, or for the
6 use of, the commissioner in confidence;
- 7 (5) Privileged or confidential and related to trade
8 secrets and commercial or financial information
9 obtained from a person;
- 10 (6) Obtained pursuant to any lawful investigation for the
11 purpose of enforcing the laws regulating licensees or
12 authorized delegates;
- 13 (7) Related solely to the internal personnel rules or
14 other internal practices of the commissioner;
- 15 (8) Contained in personnel, medical, and similar files,
16 including financial files, the disclosure of which
17 would constitute a clearly unwarranted invasion of
18 personal privacy; or
- 19 (9) Contained in inter-agency and intra-agency
20 communications, whether or not contained in written
21 memoranda, letters, tapes, or records, that would not
22 be routinely available by law to a private party,



1 including memoranda, reports, and other documents
2 prepared by the staff of the commissioner.

3 (b) Any information identified in subsection (a) is
4 confidential and not subject to subpoena or other legal process.

5 (c) The commissioner shall furnish a copy of each report
6 of examination to the licensee or authorized delegate examined.
7 The report and its contents shall remain the property of the
8 commissioner and shall not be disclosed to any person who is not
9 an officer, director, employee, authorized auditor, attorney,
10 other consultant, or advisor of the licensee or authorized
11 delegate. Any person who has received the report from the
12 licensee or authorized delegate shall be bound by the
13 confidentiality provisions of this section. The report and its
14 contents shall not be subject to subpoena or other legal process
15 requiring disclosure.

16 **§ -20 Money transmitter receipts and refunds.** (a) Each
17 licensee who receives money or monetary value for transmission
18 and the licensee's authorized delegates shall transmit the
19 monetary equivalent of all money or equivalent value received
20 from a customer for transmission, net of any fees, or issue
21 instructions committing the money or its monetary equivalent, to
22 the person designated by the customer within ten business days



1 after receiving the money or equivalent value, unless otherwise
2 ordered by the customer or unless the licensee or its authorized
3 delegate has reason to believe that a crime has occurred, is
4 occurring, or may occur as a result of transmitting the money.

5 (b) Each licensee who receives money or monetary value for
6 transmission and the licensee's authorized delegates shall
7 provide a receipt to the customer that clearly states the amount
8 of money or equivalent value presented for transmission and the
9 total of the fees charged by the licensee. If the rate of
10 exchange for a money transmission to be paid in the currency of
11 another country is fixed by the licensee for that transaction at
12 the time the money transmission is initiated, the receipt
13 provided to the customer shall disclose the rate of exchange for
14 that transaction, and the duration, if any, for the payment to
15 be made at that fixed rate of exchange. If the rate of exchange
16 for a money transmission to be paid in the currency of another
17 country is not fixed at the time the money transmission is sent,
18 the receipt provided to the customer shall disclose that the
19 rate of exchange for that transaction will be set at the time
20 the recipient of the money transmission picks up the funds in
21 the foreign country.

22 (c) For purposes of this section:



1 (1) Money is considered to have been transmitted when it
2 is available to the person designated by the customer,
3 whether or not the designated person has taken
4 possession of the money;

5 (2) "Monetary equivalent", when used in connection with a
6 money transmission in which the customer provides the
7 licensee or its authorized delegate with the money of
8 one government, and the designated recipient is to
9 receive the money of another government, means the
10 amount of money, in the currency of the government
11 that the designated recipient is to receive, as
12 converted at the retail exchange rate offered by the
13 licensee or its authorized delegate to the customer in
14 connection with the transaction; and

15 (3) "Fees" do not include revenue that a licensee or its
16 authorized delegate generates, in connection with a
17 money transmission, in converting the money of one
18 government into the money of another government.

19 (d) Each licensee who receives money or monetary value for
20 a money transmission and the licensee's authorized delegates
21 shall refund to a customer all moneys received for transmittal



1 within ten days of receipt of a written request for a refund
2 unless any of the following occurs:

3 (1) The moneys have been transmitted and delivered to the
4 person designated by the customer prior to receipt of
5 the written request for a refund;

6 (2) Instructions have been given committing an equivalent
7 amount of money to the person designated by the
8 customer prior to receipt of a written request for a
9 refund;

10 (3) The licensee or its authorized delegate has reason to
11 believe that a crime has occurred, is occurring, or
12 may occur as a result of transmitting the money as
13 requested by the customer or refunding the money as
14 requested by the customer; or

15 (4) The licensee is otherwise barred by law from making a
16 refund.

17 **§ -21 Authorized delegate contracts.** Licensees desiring
18 to conduct licensed activities through authorized delegates
19 shall authorize each delegate to operate pursuant to an express
20 written contract. These contracts shall provide the following:



- 1 (1) That the licensee appoints the person as the
2 licensee's delegate with authority to engage in money
3 transmission on behalf of the licensee;
- 4 (2) That neither a licensee nor an authorized delegate may
5 authorize subdelegates without the written consent of
6 the commissioner;
- 7 (3) That the licensee is subject to supervision and rule
8 by the commissioner; and
- 9 (4) That the authorized delegate certifies that it is in
10 compliance with the recordkeeping and reporting
11 requirements under Title 31 United States Code Section
12 5311 et seq., 31 Code of Federal Regulations Part 103,
13 Section 125, and other federal and state laws
14 pertaining to money laundering.

15 **§ -22 Authorized delegate; conduct.** (a) An authorized
16 delegate of a licensee shall not make any fraudulent or false
17 statement or misrepresentation to a licensee or to the
18 commissioner.

19 (b) All money transmissions, sales, or issuances of
20 payment instruments conducted by authorized delegates shall be
21 in accordance with the licensee's written procedures provided to
22 the authorized delegate.



1 (c) An authorized delegate shall remit all money owing to
2 the licensee in accordance with the terms of the contract
3 between the licensee and the authorized delegate. The
4 commissioner shall have the discretion to set, by rule, adopted
5 pursuant to chapter 91, the maximum remittance time.

6 (d) An authorized delegate is deemed to consent to the
7 commissioner's inspection, with or without prior notice to the
8 licensee or authorized delegate, of the books and records of the
9 authorized delegate when the commissioner has a reasonable basis
10 to believe that the licensee or delegate is not in compliance
11 with this chapter.

12 (e) An authorized delegate is under a duty to act only as
13 authorized under the contract with the licensee. An authorized
14 delegate that exceeds its authority is subject to cancellation
15 of the delegate's contract and further disciplinary action by
16 the commissioner.

17 (f) All funds, except fees, received by an authorized
18 delegate from the sale or delivery of a payment instrument
19 issued by a licensee or received by the delegate for
20 transmission, from the time the funds are received by the
21 delegate until the time when the funds or an equivalent amount
22 are remitted by the delegate to the licensee, shall constitute



1 trust funds owned by and belonging to the licensee. If an
2 authorized delegate commingles any trust funds with any other
3 funds or property owned or controlled by the delegate, all
4 commingled funds and other property of the delegate shall be
5 impressed with a trust in favor of the licensee in an amount
6 equal to the amount of the proceeds due to the licensee.

7 (g) An authorized delegate shall report to the licensee
8 the theft or loss of payment instruments within twenty-four
9 hours from the time the delegate knew or should have known of
10 the theft or loss.

11 **§ -23 Prohibited practices.** It is a violation of this
12 chapter for a licensee to:

- 13 (1) Directly or indirectly employ any scheme, device, or
14 artifice to defraud or mislead any person, including,
15 but not limited to, bait and switch advertising or
16 sales practices;
- 17 (2) Directly or indirectly engage in any unfair or
18 deceptive act or practice toward any person, including
19 but not limited to any false or deceptive statement
20 about fees or other terms of a money transmission or
21 currency exchange;



- 1 (3) Directly or indirectly obtain property by fraud or
2 misrepresentation;
- 3 (4) Knowingly make, publish, or disseminate any false,
4 deceptive, or misleading information in the provision
5 of money services;
- 6 (5) Knowingly receive or take possession for personal use
7 any property of any money services business, other
8 than in payment for services rendered, and with intent
9 to defraud, and omit to make, or cause or direct to
10 omit to make, a full and true entry in the books and
11 accounts of the regulated business;
- 12 (6) Concur in making any false entry, or omit or concur in
13 omitting any material entry in the books or accounts
14 of the business;
- 15 (7) Knowingly make or publish to the commissioner or
16 commissioner's designee, or concur in making or
17 publishing to the commissioner or commissioner's
18 designee, any written report, exhibit, or statement of
19 the licensee's affairs or pecuniary condition
20 containing any material statement that is false, or
21 omit or concur in omitting any statement required by
22 law to be contained therein; or



1 (8) Fail to make any report or statement lawfully required
2 by the commissioner.

3 **§ -24 Suspension or revocation of licenses.** The
4 commissioner may suspend or revoke a license if the commissioner
5 finds that:

6 (1) Any fact or condition exists that, if it had existed
7 at the time when the licensee applied for its license,
8 would have been grounds for denying the licensee's
9 application;

10 (2) The licensee's net worth becomes inadequate and the
11 licensee, after ten days written notice from the
12 commissioner, fails to take steps as the commissioner
13 deems necessary to remedy a deficiency;

14 (3) The licensee knowingly violates any material provision
15 of this chapter or any rule or order validly adopted
16 by the commissioner under authority of this chapter;

17 (4) The licensee is conducting its business in an unsafe
18 or unsound manner;

19 (5) The licensee is insolvent;

20 (6) The licensee has suspended payment of its obligations,
21 has made an assignment for the benefit of its



1 creditors, or has admitted, in writing, its inability
2 to pay its debts as they become due;

3 (7) The licensee has filed for bankruptcy, reorganization,
4 arrangement, or other relief under any bankruptcy law;

5 (8) The licensee refuses to permit the commissioner to
6 make any examination authorized by this chapter; or

7 (9) The competence, experience, character, or general
8 fitness of the licensee indicates that it is not in
9 the public interest to allow the licensee to have a
10 license.

11 **§ -25 Suspension or revocation of authorized delegates.**

12 (a) The commissioner may issue an order suspending or revoking
13 the designation of an authorized delegate, if the commissioner
14 finds that:

15 (1) The authorized delegate violates this chapter or a
16 rule adopted or an order issued under this chapter;

17 (2) The authorized delegate does not cooperate with an
18 examination or investigation by the commissioner;

19 (3) The authorized delegate engages in fraud, intentional
20 misrepresentation, or gross negligence;

21 (4) The authorized delegate is convicted of a violation of
22 a federal or state anti-money laundering statute;



1 (5) The competence, experience, character, or general
2 fitness of the authorized delegate or a person in
3 control of the delegate indicates that it is not in
4 the public interest to permit the delegate to provide
5 money services; or

6 (6) The authorized delegate is engaging in an unsafe or
7 unsound practice.

8 (b) In determining whether an authorized delegate is
9 engaging in an unsafe or unsound practice, the commissioner may
10 consider the size and condition of the delegate's provision of
11 money services, the magnitude of the loss, the gravity of the
12 violation of this chapter, and the previous conduct of the
13 delegate.

14 (c) An authorized delegate may apply for relief from a
15 suspension or revocation of designation as an authorized
16 delegate according to procedures prescribed by the commissioner.

17 § -26 **Orders to cease and desist.** (a) If the
18 commissioner determines a violation of this chapter or a rule
19 adopted or an order issued under this chapter by a licensee or
20 authorized delegate is:



1 (1) Likely to cause immediate and irreparable harm to the
2 licensee, the licensee's customers, or the public as a
3 result of the violation; or

4 (2) Cause insolvency or significant dissipation of assets
5 of the licensee,

6 the commissioner may issue an order requiring the licensee or
7 authorized delegate to cease and desist from the violation. The
8 order becomes effective upon service of the order upon the
9 licensee or authorized delegate.

10 (b) The commissioner may order a licensee to cease and
11 desist from providing money transmission services through an
12 authorized delegate that is the subject of a separate order
13 pursuant to section -25 by the commissioner.

14 (c) An order to cease and desist remains effective and
15 enforceable pending the completion of an administrative
16 proceeding pursuant to chapter 91.

17 (d) A licensee or an authorized delegate that is served
18 with an order to cease and desist may petition the circuit court
19 for a judicial order setting aside, limiting, or suspending the
20 enforcement, operation, or effectiveness of the order pending
21 the completion of an administrative proceeding pursuant to
22 section -31 or -32.



1 (e) The commissioner shall commence an administrative
2 proceeding pursuant to chapter 91 within twenty days after
3 issuing an order to cease and desist.

4 (f) The commissioner may apply to the circuit court for an
5 appropriate order to protect the public interest.

6 **§ -27 Consent orders.** The commissioner may enter into a
7 consent order at any time with a person to resolve a matter
8 arising under this chapter. A consent order shall be signed by
9 the person to whom the order is issued or by the person's
10 authorized representative, and shall indicate agreement with the
11 terms contained in the order. A consent order may provide that
12 it does not constitute an admission by a person that this
13 chapter or a rule adopted or an order issued under this chapter
14 has been violated.

15 **§ -28 Civil penalties.** The commissioner may assess a
16 fine against a person who violates this chapter or a rule
17 adopted or an order issued under this chapter in an amount not
18 to exceed \$500 per day for each day the violation is
19 outstanding, plus the State's costs and expenses for the
20 investigation and prosecution of the matter, including
21 reasonable attorneys' fees.



1 **§ -29 Criminal penalties.** (a) A person who
2 intentionally makes a false statement, misrepresentation, or
3 false certification in a record filed or required to be
4 maintained under this chapter, who intentionally makes a false
5 entry, or who omits a material entry in a record shall be guilty
6 of a class C felony.

7 (b) An individual or person who knowingly engages in any
8 activity for which a license is required under this chapter,
9 without being licensed under this chapter, shall be guilty of a
10 misdemeanor, and be subject to a fine in an amount not to exceed
11 \$1,000, imprisonment of not more than one year, or both, and
12 each day a violation exists shall be deemed a separate offense.

13 **§ -30 Unlicensed persons.** (a) If the commissioner has
14 reason to believe that a person has violated or is violating
15 section -3, the commissioner may issue an order to show cause
16 why an order to cease and desist should not issue requiring that
17 the person cease and desist from the violation of section -3.

18 (b) If the commissioner has reason to believe that a
19 person has violated or is violating section -3, the
20 commissioner may petition the circuit court for the issuance of
21 a temporary restraining order if the public would be irreparably
22 harmed.



1 (c) An order to cease and desist becomes effective upon
2 service of the order upon the person.

3 (d) An order to cease and desist remains effective and
4 enforceable pending the completion of an administrative
5 proceeding pursuant to section -26.

6 (e) A person who is served with an order to cease and
7 desist for violating section -3 may petition the circuit
8 court for a judicial order setting aside, limiting, or
9 suspending the enforcement, operation, or effectiveness of the
10 order to cease and desist pending the completion of an
11 administrative proceeding pursuant to section -26.

12 (f) The commissioner shall commence an administrative
13 proceeding within twenty days after issuing an order to cease
14 and desist.

15 **§ -31 Administrative procedures.** All administrative
16 proceedings under this chapter shall be conducted in accordance
17 with chapter 91.

18 **§ -32 Hearings.** Except as otherwise provided in
19 sections -12(c) and -26, the commissioner may not suspend
20 or revoke a license, issue an order to cease and desist, suspend
21 or revoke the designation of an authorized delegate, or assess a
22 civil penalty without notice and an opportunity to be heard.



1 § -33 **Division functions.** (a) The division shall
2 exercise all administrative functions of the State in relation
3 to the regulation, supervision, and licensing of money
4 transmitters.

5 (b) The division shall interpret and carry out the
6 provisions of this chapter."

7 SECTION 2. A person who would be regulated under this Act
8 shall not be required to comply with this Act until July 1,
9 2007, but may elect to do so before July 1, 2007. A person who
10 files an application for a license pursuant to this Act before
11 July 1, 2007, and whose application is determined to be complete
12 by the commissioner on or before July 1, 2007, shall be deemed
13 in compliance with the licensing provisions of chapter ,
14 Hawaii Revised Statutes, until such time as the license is
15 issued or denied by the commissioner.

16 SECTION 3. This Act shall take effect on July 1, 2050.



Report Title:

Money Transmitters

Description:

Regulates money transmitters. (SB2143 HD1)

