

Model Financial Transaction Reporting Act

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Model Financial Transaction Reporting Act Policy Statement

Transaction reporting requirements are essential to an effective anti-money laundering strategy. The U.S. Senate Permanent Subcommittee on Investigations and the General Accounting Office, through separate investigations, concluded that access to financial data could assist states in fighting money laundering. The requirement that all businesses create records of significant cash and other suspicious transactions forces money movement into the open and exposes the people and property involved. The existence of the reports and law enforcement's attention to them have a stifling effect on the use of large amounts of illegally derived cash.

Federal law mandates the creation of a battery of reports by financial institutions and others. These reports are designed to expose the "underground economy" by creating a paper trail; of large cash transactions — generally those over \$10,000. Federal laws, however, do not provide state and local law enforcement access to these reports on a broad basis. Some reports are obtainable from federal agencies on specific request. Others are not available to state and local authorities at all. The Model Financial Transaction Reporting Act serves the narrow and specific purpose of assuring that state and local authorities have comprehensive access to financial transaction reports.

The counterbalance of reporting, of course, is the expense involved in the creation and submission of the reports. This Model Act minimizes expenses by providing for piggy-back compliance with federal requirements whenever possible and by assuring that the state requirements are the same as the federal. This eliminates dual compliance expenses as much as possible and obviates the need for non-identical training of business employees.

Highlights of the Model Financial Transaction Reporting Act

- Provides legislative findings on the economic rationale for financial remedies.
- Guides the application of financial remedies and allows reciprocal agreements encouraging interstate cooperation and uniformity through special purpose and uniformity sections.
- Parallels current federal transaction reporting requirements for who must make reports, the contents of the reports and the circumstances that trigger the obligation to report.
- Designs the reports to provide data from which law enforcement may make general resource decisions; improve geographic and business sector targeting; focus on specific individuals and businesses; and assist in the proof of cases under investigation. The reports under the [Act] are:

(1) Suspicious Transaction Reports (STRs)

This obligation to report applies to all money transmitters including all financial institutions as defined by federal law and several additional categories of businesses. The form of the report is within the discretion of the attorney general.

(2) Currency and Foreign Transactions Reporting Act Reports

These requirements apply only to money transmitters and only impose a duty to report if the transmitter is required to file under 31 U.S.C. 5311-26 and the relevant federal regulations.

(A) Cash Transaction Reports (CTRs)

A money transmitter must file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to the

transmitter if the transaction involves more than \$10,000 in currency. Under various circumstances, multiple transactions are to be totalled and treated as a single transaction (“aggregated”) for the purpose of reporting.

(B) Casino Reports (CTRCs)

Casinos are required to file forms similar to the general CTR by federal law. Since casinos are not legal in most states, this will have limited application.

(C) Currency or Monetary Instrument Reports (CMIRs)

Federal law requires that each person who physically transports (including mails or ships) or causes to be transported or attempts to transport, into or out of the United States, currency or other monetary instruments in an aggregate amount of over \$10,000 at one time or receives such currency or monetary instruments from abroad, must make a report of that event. The report is called a Currency or Monetary Instrument Report or CMIR. Federal requirements contain numerous exemptions for legitimate commercial entities, only the model state statute automatically incorporates all of these exemptions. Individuals and businesses who are not money transmitters are not required to make a state CMIR report.

(D) Foreign Bank Account Reports (FBARs)

Under federal law, each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) that has an interest in or authority over a bank account, securities or other financial account in a foreign country must report that relationship each year. These are

called Foreign Bank Account Reports or FBARs. As with CMIRs, the requirement applies only to money transmitters, and not to all persons. These reports have great significance despite their limited application, since non-bank money transmitters such as casa de cambios must disclose Mexican accounts.

(3) Reports of Receipt of More Than \$10,000 in a Trade or Business (8300s)

All persons (not just money transmitters) engaged in a trade or business who receive more than \$10,000 in cash or a cash equivalent in one transaction (or in two or more related transactions) must file a report of the transaction. The report is to contain the information contained in the federal IRS Form 8300.

(4) \$3,000 Logs

All money transmitters who are required by federal law to keep so-called "\$3,000 logs" must keep them for the state attorney general as well. These logs are required whenever a financial institution sells a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency (including

contemporaneous purchases totaling \$3,000). If the purchaser has a deposit account with the financial institution his or her identity must be verified and basic data about the transaction noted including: name, account number, date, branch, type of instrument, serial number, and dollar amount. If the purchaser does not have a deposit account, his or her identity must be verified by identification provided, any person for whom they are dealing must be identified, and the same data collected and logged. The logs must be available for inspection at any time.

(5) Targeting Projects

The banking superintendent or other appropriate official may require additional recordkeeping in a specified geographic area for a sixty day period. Modeled on 31 U.S.C. 5326, this provision is intended to allow gathering of financial report data on a more comprehensive basis than allowed by the other financial reporting requirements, and to address specific localized money laundering problems.

Section by Section Summary of the Model Financial Transaction Reporting Act

Section 1.

Provides short title.

Section 2.

Provides legislative findings on the economics of ongoing criminal activity and provides an economic-based rationale for financial remedies.

Section 3.

Sets out the goals of the [Act], defending legitimate commerce from criminal activity and remedying the economic effects of crime.

Section 4.

Defines key phrases, including “money transmitter”, “conduct the business” and “transaction.”

Section 5.

Parallels current federal transaction reporting requirements on the issues of who must make reports, the contents of the reports and the circumstances that trigger the obligation to report. The reports are designed to provide law enforcement with data from which law enforcement may make general resource decisions, improve geographic and business sector targeting, focus on specific individuals and businesses in order to head off trouble at the first sign of unsound business or illegal conduct, and assist in the proof of cases under investigation. The reports are:

(a) Suspicious Transaction Reports (STRs)

The suspicious transaction report is a state analog of federal regulatory reporting of suspicious financial transactions. The obligation is on all money transmitters. The form of the report is within the discretion of the attorney general. FinCEN is now in the process of creating a single form for federally regulated institutions by synthesizing the various forms now in use by

different federal agencies. The form approved by the attorney general under this subsection may follow the final FinCEN form.

(b) Currency and Foreign Transactions Reporting Act Reports

This subsection also applies to all money transmitters, but, unlike (a) only imposes a duty to report if the transmitter is required to file under 31 U.S.C. 5311-26 and the relevant federal regulations. It therefore does not impose a reporting duty on non-transmitters or on any person who is not presently obliged to file under federal law. These criteria have different effects on different reports. The reports required under (b) are:

- (1) Cash Transaction Reports (CTRs)
- (2) Casino Reports (CTRCs)
- (3) Currency or Monetary Instruments Reports (CMIRs)
- (4) Foreign Bank Account Reports (FBARs)

(c) Reports of Receipt of More Than \$10,000 in a Trade or Business (8300s)

Each trade or business that receives over \$10,000 in one or more related transactions in cash or certain monetary instruments must report the event to the IRS on Form 8300. The state report is to contain the information contained in the federal IRS Form 8300.

(d) \$3,000 Logs

All money transmitters who are required by federal law to keep so-called “\$3,000 logs” must keep them for the state attorney general as well.

(e) Targeting Orders

This provision is modeled on 31 U.S.C. 5326. It is intended to allow gathering of financial report data on a more comprehensive, targeted basis than allowed by the other financial reporting requirements, and will address specific money laundering problems. It is somewhat more limited than federal law in that it does not require reports on transactions under \$500.

(f) Non-Duplication of Reports

The financial transaction reports required by the [Act] are of four types: CTRs (including casino reports), CMIRs, FBARs, and 8300s. Some states have been operating under a Memorandum of Understanding (MOU) with the U.S. Department of Treasury for access to state-related CTRs and CMIRs. These MOUs allow the state to obtain computer tapes containing all of the state-related CTRs and CMIRs on a regular basis from the federal data centers. Access by this method is very inexpensive, since no data entry is required, and is rapid enough to be useful.

The FBARs relating to money transmitters and the 8300s are not covered by any memorandum of understanding.

Section 5(f)(1) recognizes the present MOUs and the possibility that access arrangements may change in the future. It provides that the filing of a report with the appropriate federal agency is deemed to be compliance with the parallel state requirement "unless the attorney general has notified the Superintendent that reports of that type are not regularly and comprehensively transmitted by that federal agency to the attorney general." Therefore, no business filing CTRs or CMIRs in compliance with federal law need file any different or additional report with the state, because a

current MOU results in the regular and comprehensive transmittal of those reports to the attorney general. The same is not true of FBARs or 8300s, however. These will have to be separately filed with the state.

Section 5 (f)(2) and (3) provide protection from civil liability for financial institutions that notify law enforcement of possible violations. These provisions cover the broad range of persons involved and cover keeping and filing reports as well as divulgence of information.

(g) Allows dissemination to law enforcement on a "need to know, right to know" basis, but creates a criminal penalty for unauthorized release, similar to the protection of grand jury information.

(h) Creates criminal penalties for the violation of the transaction reporting requirements.

(i) Makes violations punishable on the basis of each separate transaction.

(j) Provides an exception to public records laws for reports etc. obtained under this section.

Section 6.

Provides investigative authority to the attorney general similar to that in securities and other regulation fields.

Section 7.

Encourages uniformity in the application, liberal construction and interstate employment of the [Act].

Section 8.

States that the provisions of the [Act] are severable so the invalidity of one does not affect the validity of the others.

Section 9.

Makes the [Act] effective on a date to be specified.

Model Financial Transaction Reporting Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Model Financial Transaction Reporting Act.”

Section 2. Legislative Findings.

(a) Criminal activity and the networks that characterize criminal industries divert millions of dollars from the legitimate commerce of this state each year through the provision of illicit goods and services, force, fraud, and corruption.

(b) Individuals and groups associated together to conduct criminal activity pose an additional threat to the integrity of legitimate commerce by obtaining control of legitimate enterprises through criminal means, by force or fraud, and by manipulating those enterprises for criminal purposes.

(c) Money and power generated by criminal activity are being used to obtain control of legitimate enterprises, to invest in legitimate commerce, and to control the resources of facilitating ongoing criminal activity.

(d) Criminal activity and proceeds of criminal activity subvert the basic goals of a free democracy by expropriating the government’s monopoly of the legitimate use of force, by undermining the monetary medium of exchange and by subverting the judicial and law enforcement processes that are necessary for the preservation of social justice and equal opportunity.

(e) Criminal activity impedes free competition, weakens the economy, harms in-state and out-of-state investors, diverts taxable funds, threatens the domestic security, endangers the health, safety, and welfare of the public and debases the quality of life of the citizens of this state.

(f) Criminal activity becomes entrenched and powerful when the social sanctions employed to combat it are unnecessarily limited in their vision of the goals that may be achieved, in their legal tools or in their procedural approach.

(g) Societal strategies and techniques that emphasize bringing criminal remedies to bear on individual offenders for the commission of specific offenses are inadequate to reach the economic incentive supporting the criminal network, are expensive to implement, and are costly in terms of the loss of personal freedom of low-level participants in criminal networks. Comprehensive strategies are required to complement the criminal enforcement strategies by focusing on the financial components and motivations of criminal networks; enlisting the assistance of private victims; empowering courts with financially oriented tools; and developing new substantive, procedural and evidentiary laws creating effective financial remedies for criminal activity.

COMMENT

Legislative findings are useful in providing guidance to interpreting courts and publicizing and memorializing the goals and objectives of the [Act]. *Block v. Hirsch*, 256 U.S. 135, 154 (1921) (“entitled at least to great respect”).

Section 3. Purposes.

The purposes of this [Act] are:

(a) to defend legitimate commerce from criminal activity;

(b) to provide economic disincentives for criminal activity;

(c) to remedy the economic effects of criminal activity and criminal networks; and

(d) to lessen the economic and political power of criminal networks in this state by providing to the people and to the victims of criminal activity new preventive measures through criminal sanctions and civil remedies.

Section 4. Definitions.

In this [Act], unless the context otherwise requires:

(a) "Authorized delegate" means a person designated by the licensee under Section 10 of the [Model Money Transmitter Licensing and Regulation Act].

(b) "Check cashing" means exchanging for compensation a check, draft, money order, traveler's check or a payment instrument of a licensee for money delivered to the presenter at the time and place of the presentation.

(c) "Compensation" means any fee, commission or other benefit.

(d) "Conduct the business" means engaging in activities regulated under the [Model Money Transmitter Licensing and Regulation Act] [more than ten (10) times in any calendar year] for compensation.

(e) "Foreign money exchange" means exchanging for compensation money of the United States government or a foreign government to or from money of another government at a conspicuously posted exchange rate at the time and place of the presentation of the money to be exchanged.

(f) "Licensee" means a person licensed under the [Model Money Transmitter Licensing and Regulation Act].

(g) "Location" means a place of business at which activity regulated by the [Model Money Transmitter Licensing and Regulation Act] occurs.

(h) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.

(i) "Money transmitter" means a person who is located or doing business in this state, including a check casher and a foreign money exchanger, and who:

- (1) sells or issues payment instruments;
- (2) conducts the business of receiving money for the transmission of or transmitting money;
- (3) conducts the business of exchanging payment instruments or money into any form of money or payment instrument;
- (4) conducts the business of receiving money for obligors for the purpose of paying that obligor's

bills, invoices or accounts; or

(5) meets the definition of a bank, financial agency or financial institution as prescribed by 31 U.S.C. Section 5312 or 31 C.F.R. Section 103.11 [and any successor provisions].

(j) "Payment instrument" means a check, draft, money order, traveler's check or other instrument or order for the transmission or payment of money, sold to one or more persons, whether or not that instrument or order is negotiable. "Payment instrument" does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher or a letter of credit.

(k) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

(l) "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

(m) "Superintendent" means the superintendent of banks [insert proper title of official].

(n) "Transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

(o) "Transmitting money" includes the transmission of money by any means including transmission within this country or to or from locations abroad by payment instrument, wire, facsimile or electronic transfer, courier or otherwise.

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

COMMENT

Key terms are defined. In order to take advantage of the status of being a “foreign money exchange” the business must conspicuously post its exchange rates. Otherwise, it presents a need for licensing.

“Conduct the business” derives its meaning from federal tax law relating to deductions available to persons in the business of various profit-seeking pursuits. Its application to federal gambling legislation, 18 U.S.C. Section 1955, provides useful case law examples.

The central definition, “money transmitter” is compiled from the conduct that requires a license, with persons who meet the federal definitions of “bank,” “financial agency” and “financial institution” also included. Reporting obligations fall on “money transmitters,” the broadest of the categories by virtue of this definition.

The definitions of “proceeds” and “property” also appear in the Commission Forfeiture Reform Act (CFRA). If they are enacted together, the CFRA definition of “proceeds” should be retained because its additional clause has meaning in the context of forfeiture of proceeds. The CFRA definition of property should be deleted as duplicative.

The term “superintendent” is used throughout the draft for simplicity. The analogous position or title must be substituted to conform with legislative assignment of this regulatory function and with state nomenclature.

Section 5. Reports to the Attorney General.

(a) Each licensee and authorized delegate of a licensee and each money transmitter shall file with the attorney general’s office, in a form prescribed by the attorney general, a report of any activity or business conducted by any customer that the licensee, authorized delegate or money transmitter believes may constitute a possible money laundering violation as defined in the [Model Money Laundering Act] or other specified unlawful activity as defined in the [Model Money Laundering Act]. That report shall be filed within fifteen (15) days of the activity.

(b) A licensee, authorized delegate or money transmitter that is required to file any report regarding business conducted in this state pursuant to the Currency and Foreign Transactions Reporting Act, 31 U.S.C. Sections 5311 through 5326 and 31 C.F.R. part 103 or 12 C.F.R. Section 21.11, shall file a duplicate of that report with the attorney general.

(c) All persons engaged in a trade or business who receive more than \$10,000 in money in one transaction, or who receive more than \$10,000 in money through two or more related transactions, must complete and file with the attorney general the information required by 26 U.S.C. Section 6050i and C.F.R. Section 1.6050I, [and any successor provisions,] concerning returns relating to cash received in trade or business.

(d) A licensee, authorized delegate or money transmitter that is regulated under the Currency and Foreign Transaction Reporting Act, 31 U.S.C. Section 5325 and 31 C.F.R. part 103, and that is required to make available prescribed records to the secretary of the United States Department of Treasury upon request at any time, shall follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and shall make these records available to the attorney general on request at any time.

(e) (1) If the [superintendent] finds that reasonable grounds exist for requiring additional recordkeeping and reporting in order to carry out the purposes of this [Act] and prevent evasion of this [Act], the [superintendent] may issue an order requiring any group of licensees, authorized delegates or money transmitters in a geographic area to:

(A) obtain information described by the [superintendent] in the order regarding:

(i) any transactions in which the licensee, authorized delegate, or money transmitter is involved for the payment, receipt or transfer of United States coin or currency or other monetary instruments described by the [superintendent] in the order, involving amounts or denominations of \$500 or more, as the [superintendent] may prescribe; and

(ii) any other person participating in those transactions;

(B) maintain records of that information for five years or less, as the superintendent may prescribe and make those records available to the attorney general and the [superintendent]; and

(C) File a report with the attorney general and the [superintendent] regarding any transaction described in the order in the manner prescribed in the order.

(2) An order issued under subsection (e) of this

section is not effective for more than 60 days unless renewed by the [superintendent] after finding that reasonable grounds exist for continuation of the order.

(f) (1) The timely filing of a report required by this section with the appropriate federal agency shall be deemed compliance with the reporting requirements of this section, unless the attorney general has notified the [superintendent] that reports of that type are not being regularly and comprehensively transmitted by that federal agency to the attorney general.

(2) This [Act] does not preclude a licensee, authorized delegate, money transmitter, financial institution or a person engaged in a trade or business, in their discretion, from instituting contact with, and thereafter communicating with and disclosing customer financial records to appropriate state or local law enforcement agencies if the licensee, authorized delegate, money transmitter, financial institution or person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting requirement of this [Act].

(3) A licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent or authorized delegate of any of them or any public official or governmental employee, that keeps or files a record pursuant to this section or that communicates or discloses information or records under paragraph (2) of this subsection, is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained in that report.

(g) The attorney general may report any possible violations indicated by analysis of the reports required by this [Act] to any appropriate law enforcement agency for use in the proper discharge of its official duties. The attorney general shall provide copies of the reports required by this [Act] to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this [Act] to which the reports are relevant. A person who releases information received pursuant to this subsec-

tion except in the proper discharge of their official duties is guilty of a [insert reference to state classification] misdemeanor.

(h) It shall be unlawful for any person:

(1) to knowingly violate any provision of this [Act]; or

(2) with the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct; or to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct; to knowingly furnish or provide to a licensee, authorized delegate, money transmitter, financial institution, person engaged in a trade or business, or any officer, employee, agent or authorized delegate of any of them, or to the attorney general, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this section; or

(3) with the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct; or to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct; or to evade the making or filing of a report required under this [Act]; or to cause the making or filing of a report that contains a material omission or misstatement of fact; to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, money transmitters, financial institutions or persons engaged in a trade or business.

(i) A person who violates subsection (h) is guilty of a [reference to appropriate classification] felony and is subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, \$5,000.

(j) Notwithstanding any other provision of law, any violation of this section constitutes a separate, punishable offense as to each transaction or exemption.

(k) Any report, record, information, analysis, or request obtained by the attorney general or any agency pursuant to this [Act] is not a public record as defined in [reference to state statute] and is not subject to disclosure.

COMMENT

The state's attorney general has been specified herein as the recipient of financial transaction reports. However, the designated recipient of these transaction reports may vary from state to state. State access to and enforcement of financial transaction reports is necessary wherever the state is experiencing significant money laundering activity, particularly border states, drug importation corridors, and states containing regional or national financial centers. This section takes every available opportunity to minimize the public and private expense of gathering the data, but some expense is unavoidable. States should consider the need for such measures accordingly. In those areas where money laundering is an enforcement priority, reporting is a powerful and effective tool, made especially effective by modern computer capabilities.

The concept of computerized state financial data analysis includes four capabilities. First, the data should be readily retrievable in response to specific queries on, for example, a name, social security number or an address.

Second, the data search should be enhanced, so that a name inquiry, for example, would trigger responses including CTRs, CMIRs or other reports that did not contain the specified name but did contain some data linked to the name. The nature of the link would be defined by "expert rules," criteria that mimic the analysis that an expert would do of the entire database.

For example, the computer could respond to a name query with financial report data containing an address that the subject used, even though a particular CTR/CMIR did not contain the subject's name. It could also link aliases, switched names, or sound-alikes. It could identify networks of names, addresses, social security numbers and other identifiers, and describe the activity of the group. The group's activity may be significant in ways beyond that of a single member, such as the activity of a group of "smurfs" or "mules."

Third, the computer could be fed expert rules for the identification of potential money laundering suspects. Criteria can be posed to the computer so that it can generate lists in response to the criteria. Experimentation with such criteria has advanced for a number of years in the Department of Treasury, most recently under FinCEN, and several states are now building on that foundation and adjusting those nationwide expert rules to the peculiarities of individual states.

Fourth, the agency may pose general statistical ques-

tions to the computer for the purpose of generating strategic guidance. The database could then be useful as an empirical check on other trend analyses, intelligence, and economic observations.

States that have access to financial transaction reports have found them extremely useful. As FinCEN capabilities develop, these reports will become even more useful.

(a) The Suspicious Transaction Report, (STR) deserves particular discussion. In a report on money laundering by the American Bankers Association, *Toward a New National Drug Policy - The Banking Industry Strategy; American Bankers Association Money Laundering Task Force*, April 27, 1989, the financial industry adopted a philosophy regarding law enforcement, the financial industry and money laundering. The introduction to that report reads:

It is as imperative for the banking industry as it is for the law enforcement community to deter drug dealers from using our nation's financial institutions to launder monies derived from illegal activity. To be successful, however, there must be a partnership in this effort . . . Our members strongly believe that the government and the banking industry need to work together as a team, not as adversaries, in pursuing the goal of a drug-free America.

Arizona is a good example of such a team. As of September 20, 1991, each "money transmitter" doing business in Arizona, a classification that includes all banks, financial agencies and financial institutions as defined by 31 U.S.C. 5312 or 31 C.F.R. 103.11, files:

In a form prescribed by the attorney general a report of any suspicious activity or business conducted by a customer that the . . . money transmitter believes may constitute a possible money laundering . . . [or other "racketeering" offense under the state's RICO laws] violation . . .

The state STR requirement goes beyond the analogous federal Criminal Referral Forms. It applies to all money transmitters, including various walk-in financial services such as check cashers, money exchangers and telegraph services. The Arizona Attorney General sought and received industry assistance in the design of the STR form, and industry representatives designed the form to be brief. A three-part list of possibly suspicious

circumstances is provided on the back of the STR form. The state STR is intended to tap a different dimension of financial information than the CTR/8300 reports. Those forms are part of a set of statutory barriers erected to channel the cash economy, especially at the point that cash enters the financial system. Because these barriers must be rigid, the form must be completed even though the banker may have known the customer for years and may know exactly the innocent source or purpose of the cash being reported. The STR is designed to elicit the informed judgment of the people who often know the most about the customer and the transaction. The list of possibly suspicious circumstances is provided to help remind involved personnel of some of the circumstances commonly associated with money laundering. The instructions caution, however, that even the presence of several of the listed circumstances in the same transaction may be adequately explained by other facts or circumstances.

The information requested includes: reporting person's identification; customer identification, including date of birth, social security number or employer identification number and occupation; description of transaction; and additional information.

A portion of the form was left blank for comments. The comment section has proven to be the most useful in detecting criminal activity. In contrast with the federal reports, which require only objective information, STRs give the person filling out the report an opportunity to state subjective impressions and observations. Often bank personnel will include information in the comment section that they omit from the federal Criminal Referral Forms and CTRs.

The STR is an open invitation to the financial industry to provide selective information. Reporting is also encouraged by statutory immunity from suit and by restrictions on dissemination of the reported information to prevent dissemination for anything other than bona fide law enforcement purposes. A state STR system is a useful supplement to the federal system and, if properly developed, may provide the basis for scaling back the expensive federal reporting program in the future. Experience with the STR has shown that it is a fairly reliable predictor of criminal activity when used in conjunction with other data.

(b) Currency and Foreign Transactions Reporting Act Reports.

This subsection applies to all money transmitters, but

only imposes a duty to report if the transmitter is required to file under 31 U.S.C. 5311-26 and the relevant federal regulations. It therefore does not impose a reporting duty on non-transmitters or on any person who is not presently obliged to file under federal law. The reports required under 28(b) are:

1) Cash Transaction Reports (CTRs)

A money transmitter must file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to the transmitter if the transaction involves more than \$10,000 in currency. Under various circumstances, multiple transactions are to be totalled and treated as a single transaction ("aggregated") for the purpose of reporting.

2) Casino Reports (CTRCs)

Casinos are separately required to file forms similar to the CTR by federal law and therefore 28(b).

3) Currency or Monetary Instrument Reports (CMIRs)

Federal law requires that each person who physically transports (including mails or ships) or causes to be transported or attempts to transport currency or other monetary instruments in an aggregate amount of over \$10,000 at one time in or out of the United States, or receives such currency or monetary instruments from abroad, must make a report of that event. The report is generally called a "Currency or Monetary Instrument Report" or "CMIR." A monetary instrument includes currency, traveler's checks, and negotiable instruments or securities in bearer form or made to a fictitious payee or in such a form that title passes on delivery. The federal requirements contain numerous exemptions for legitimate commercial entities. The [Act] automatically incorporates all of the federal exemptions. It further reduces its impact by requiring reports only of "money transmitters," not of all "persons." Therefore, individuals and businesses who are not money transmitters are not required to make a state CMIR report.

4) Foreign Bank Account Reports (FBARs)

Under federal law, each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) that has an interest in or authority over a bank, securities or other financial account in a foreign country must report that relationship each year. These are sometimes called "Foreign Bank Account Reports" or "FBARs." As with CMIRs, the requirement applies only to money transmitters, and not to all persons.

(c) Reports of Receipt of More Than \$10,000 in a Trade or Business (8300s)

All persons engaged in a trade or business, whether or not they are money transmitters, who receive more than \$10,000 in cash or a cash equivalent in one transaction (or in two or more related transactions) must file a report of the transaction. The report is to contain the information contained in the federal IRS Form 8300.

(d) \$3,000 Logs

All money transmitters who are required by federal law to keep so-called “\$3,000 logs” must keep them for the attorney general as well. These logs are required whenever a financial institution sells a bank check or draft, cashier’s check, money order or traveler’s check for \$3,000 or more in currency (including contemporaneous purchases totalling \$3,000). If the purchaser has a deposit account with the financial institution their identity must be verified and the basic information about the transaction noted: name, account number, date, branch, type of instrument, serial number, and dollar amount. If the purchaser does not have a deposit account, their identity must be verified by identification provided, including the identity of any person for whom they are dealing, and the same data collected and logged. The logs must be available for inspection at any time.

(e) Targeting Orders

The banking superintendent may require additional recordkeeping in a specified geographic area for a sixty day period. This provision is modeled on 31 U.S.C. 5326. It is intended to allow the superintendent to gather financial report data on a more comprehensive basis than allowed by the other financial reporting requirements, and to address specific localized money laundering problems.

This [Act] brackets language that would automatically incorporate successor federal statutes into the state requirements. Uniformity between federal and state requirements is vital to cost reduction and ease of compliance. If no state constitutional ban relating to delegation of legislative authority exists, these bracketed provisions should definitely be included. If this is not possible, regular state statute updates will be required to keep up with federal amendments.

Section 6. Investigations.

(a) The attorney general [district/county/state’s attor-

ney] may conduct investigations within or outside this state to determine if any licensee, authorized delegate, money transmitter or person engaged in a trade or business has failed to file a report required by this [Act] or has engaged or is engaging in any act, practice or transaction that constitutes a violation of this [Act].

(b) On request of the attorney general [district/county/state’s attorney], all licensees, authorized delegates, money transmitters and financial institutions shall make their books and records available to the attorney general [district/county/state’s attorney] during normal business hours for inspection and examination in connection with an investigation pursuant to this section.

COMMENT

Authority to conduct investigations is essential to make use of the information being gathered and analyzed. When transaction report data indicates suspicious activity, the attorney general must have authority to gain access to books and records of licensees, delegates, and third persons in order to move rapidly to prevent unsound activity and money laundering.

Section 7. Uniformity of Construction and Application.

(a) The provisions of this [Act] shall be liberally construed to effectuate its remedial purposes. Civil remedies under this [Act] shall be supplemental and not mutually exclusive. They do not preclude and are not precluded by any other provision of law.

(b) The provisions of this [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

(c) The attorney general is authorized to enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this [Act].

COMMENT

Uniformity of statutory provisions and cooperative enforcement mechanisms are important goals in the development of effective state enforcement mechanisms. Cooperation between sister states becomes increasingly necessary as travel, communications and wide-spread criminal networks “shrink” the country.

Section 8. Severability.

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

COMMENT

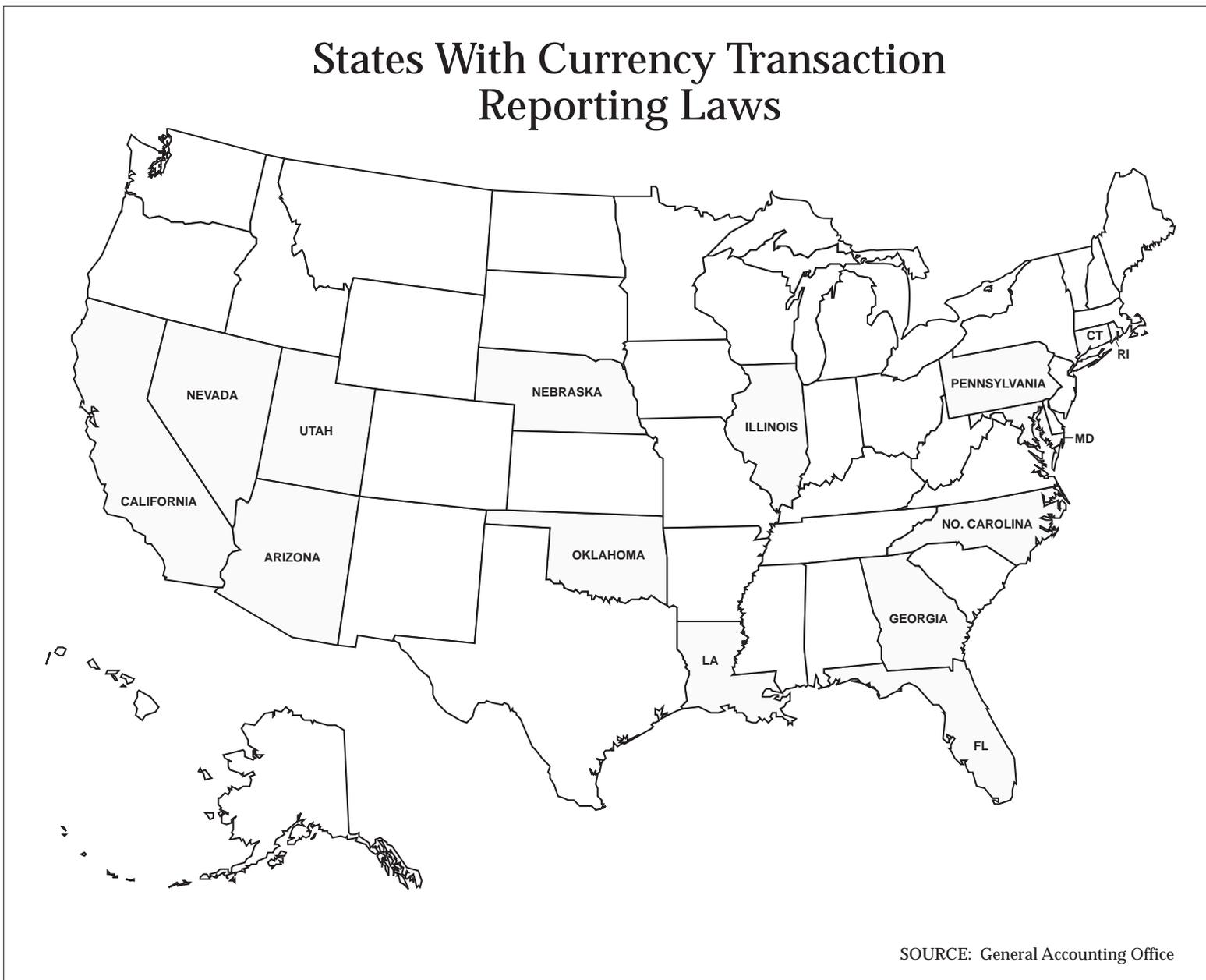
Adequate time must be provided to allow industry members to get notice of the [Act] and prepare for compliance. If the usual effective date is not adequate, a date should be selected in consultation with industry and regulatory representatives.

Section 9. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].

Appendix D

States With Currency Transaction Reporting Laws



SOURCE: General Accounting Office