

Model Money Transmitter Licensing and Regulation Act

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Model Money Transmitter Licensing and Regulation Act

Policy Statement

Institutions which transmit money or sell or issue payment instruments are susceptible to drug dealers' efforts to launder their illegally derived profits. In its 1992 report, *Current Trends in Money Laundering*, the U.S. Senate Permanent Subcommittee on Investigations concluded that non-bank money transmitters are able to launder billions of dollars each year due to inadequate regulation and supervision at state and federal levels. Urging states to enact laws to license and regulate these institutions, the report singles out Arizona's 1991 money transmitter statute as the best guide for other states. The Arizona statute was the product of over a year of negotiations between national industry representatives, local and small business representatives, regulators and enforcement representatives.

The Model Money Transmitter Licensing and Regulation Act is patterned closely on the Arizona statute with modifications which incorporate the recommendations of the Money Transmitter Regulators Association (MTRA). The Act limits entry into the money transmitter field to qualified persons and sound businesses; provides for regulation of businesses in the field; and allows revocation of business licenses for conduct tolerant of money laundering or dangerous to consumer funds.

Highlights of the Model Money Transmitter Licensing and Regulation 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.
- Prevents entry into the business by unsuitable corporations.
- Refuses to accept applicants who do not demonstrate suitable “financial condition and responsibility, financial and business experience, character and general fitness.”
- Authorizes suspension or revocation of licenses for shortcomings of general competence, experience and integrity, or for insolvency.
- Provides superintendent of banks or other appropriate official broad discretion to remove licenses to protect the public.
- Allows revocation of licenses for failure to comply with the various anti-money laundering provisions or reporting requirements.
- Permits the loss of a license for conduct of an authorized delegate if the authorized delegate violates the [Model Money Laundering Act] or rules adopted under the money transmitter regulation and transaction reporting articles, if the delegate’s conduct was the “result of a course of negligent failure to supervise or . . . of the willful misconduct of the licensee.”

These provisions are of great practical significance, because major money transmitters have enormous economic incentive to police their own delegates and thereby avoid revocation proceedings. Loss of a license in one state may automatically trigger proceedings in other states against the same licensee, with huge economic risks to the major operator. Law enforcement may therefore rely on licensees to cooperate in the investigation of their own delegates and, more importantly, in their maintenance of internal compliance programs designed to assure strict compliance with required reporting and recordkeeping provisions.

Section by Section Summary of the Model Money Transmitter Licensing and Regulation 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 “conduct the business” and “money transmitter.”

Section 5.

Requires a license for covered activity and establishes jurisdiction over activity occurring in the state.

Section 6.

Exempts from licensing governmental entities, banks, bank holding companies, credit unions, savings and loans, savings banks and other financial businesses licensed under state law. Also exempts check cashers and foreign money exchangers that do not engage in transactions beyond those two lines of business.

Section 7.

Creates an application process similar to that for other licensed financial businesses. It includes requiring substantial information about the background and personal history of the applicant, including photograph, fingerprints and financial background.

Section 8.

Requires a licensee to submit a financial statement showing net worth and maintain a bond for the protection of people injured by the licensee’s default or fraud. The licensee may post alternatives to a bond.

Section 9.

Requires licenses to be granted or denied within 120 days of application, or the application is deemed approved. Provision is made to keep track of the names and addresses of new branch offices and delegates, but they can be added by the licensed business before approval is obtained. Licensees may do business through branch offices.

Section 10.

Permits licensees to do business through delegates, called “authorized delegates.” The superintendent of banking or other appropriate official has the power to do examinations and issue orders to prevent abuses by delegates similar to powers over similar financial businesses. Licensees are assured some protection against wrongdoing or default by their delegates, but are responsible to the public for the acts of their delegates. The superintendent may issue cease and desist orders in connection with conduct of authorized delegates.

Section 11.

Gives the superintendent or other appropriate official suspension and revocation powers as in other cases. These include suspension or revocation of a license if the licensee’s authorized delegate has violated money laundering prohibitions or failed to make required financial transaction reports if done “as a result of a course of negligent failure to supervise or as a result of the willful misconduct of the licensee.” Section 11(f) and (g).

Section 12.

Requires a hearing prior to suspension or revocation. Notice is provided for, and the superintendent's or other official's authority to subpoena witnesses and physical items is made explicit.

Section 13.

Requires submission of quarterly and yearly financial reports. The superintendent or other appropriate official is given authority to make on-site examinations. The examinations may be made with representatives of other agencies, states or the federal government. Efficiency is promoted by allowing the superintendent to accept examination reports of other agencies, states, or federal agencies in lieu of on-site examination.

Section 14.

Requires that licensees be able to cover liabilities representing amounts that their customers have entrusted to them, through secure investments.

Section 15.

Requires regular records to be kept and made available for examinations. The records must demonstrate that any authorized delegate was subjected to a reasonable background investigation. All records must be kept for at least five years, must be maintained at a designated place, and must be made available at the superintendent's office on five business days notice.

Section 16.

Requires licensees to stand behind their money orders. If their delegate becomes insolvent, they must make good on the money orders their delegate sold to customers.

Section 17.

Requires the keeping of transaction records sufficient to give victims of default or investigators a paper trail.

Section 18.

Prevents licensing issues from delaying business deals. A person cannot buy control of a licensee if that person could not have gotten a license himself.

Section 19.

Gives the superintendent specific authority to seek injunctions.

Section 20.

Provides jurisdiction for state courts and the superintendent even if the person failed to get a license.

Section 21.

Precludes people who claim to be delegates of persons who have no license from escaping liability.

Section 22.

Provides criminal penalties. A false statement in connection with licenses and failure to permit lawful investigation are made felony violations, the degrees of which are to be set by the enacting legislature. All violations of the act for which a different penalty is not specifically provided are also made felony violations of a degree to be set.

Section 23.

Creates civil penalties, with the liability set at the amount equal to the gross business conducted in connection with the violation. The attorney general is given authority to bring such actions.

Section 24.

Provides that records of the superintendent are not public but may be disclosed in certain circumstances.

Section 25.

Requires rules promulgated under the [Act] are to be in accordance with state law governing such matters.

Section 26.

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

Section 27.

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

Section 28.

Makes the [Act] effective on a date to be specified to allow sufficient lead time to allow applications to be filed.

Model Money Transmitter Licensing and Regulation Act

Section 1. Short Title.

This [Act] shall be known and may be cited as the “Model Money Transmitter Licensing and Regulation 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

(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.

(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 this [Act] [more than ten (10) times in any calendar year] for compensation.

(e) "Control" means ownership of fifteen percent or more of a licensee or controlling person, or the power to vote fifteen percent or more of the outstanding voting securities of a licensee or controlling person. For the purpose of determining the percentage controlled by any person, that person's interest shall be aggregated with the interest of any other person controlled by that person or by any officer, partner, or authorized delegate of that person, or by a spouse, parent or child of that person.

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

(g) "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.

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

(i) "Location" means a place of business at which activity regulated by this [Act] occurs.

(j) "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.

(k) "Money transmitter" means a person who is located or doing business in this state, including a check cashier and a foreign money exchanger, and who does any of the following:

(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.

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

(l) "Outstanding payment instruments" means unpaid payment instruments whose sale has been reported to a licensee.

(m) "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.

(n) "Permissible investment" means any of the following:

(1) money on hand or on deposit in the name of the licensee.

(2) certificates of deposit or other debt instruments of a bank, savings and loan association, or credit union.

(3) bills of exchange or time drafts drawn on and accepted by a bank, otherwise known as bankers acceptances, and that are eligible for purchase by member banks of the federal reserve system.

(4) commercial paper bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates these securities.

(5) securities, obligations or other instruments, whose payment is guaranteed by the general taxing authority of the issuer, of the United States, of any state or by any other local government entity or any political subdivision or instrumentality of a government entity and that bear a rating of one of the three highest grades by a nationally recognized

investment service organization that has been engaged regularly in rating state and municipal issues for at least five years.

(6) stocks, bonds or other obligations of a corporation organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the several territories organized by Congress that bear a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating corporate securities for at least five years.

(7) any receivable that is due to a licensee from its authorized delegate pursuant to a contract between the licensee and the authorized delegate as described in Section 11 if the amount of investment in those receivables does not exceed 80 per cent of the total amount of those receivables that are past due or doubtful of collection.

(8) other investments approved by the superintendent by rule.

(o) "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.

(p) "Responsible individual" means a person employed by a licensee with principal active management authority over the business of the licensee in this state that is regulated under this [Act].

(q) "Superintendent" means the superintendent of banks. [Insert proper title of official]

(r) "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.

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

(t) "Traveler's check" means an instrument identified as a traveler's check on its face or commonly recognized as a traveler's check and issued in a money mul-

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. 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 definition "property" also appears in the Commission Forfeiture Reform Act (CFRA). If they are enacted together, 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. License Required.

(a) A person shall not sell or issue payment instruments, conduct the business of receiving money for transmission or transmitting money, conduct the business of exchanging payment instruments or money into any form of money or payment instrument, or conduct the business of receiving money for obligors for the purpose of paying that obligor's bills, invoices or accounts, advertise, solicit, or hold himself out as conducting the business of selling or issuing payment instruments, or of receiving money for transmission or transmitting money, or of exchanging payment instruments or money into any form of money or payment instrument, or of receiving money for obligors for the purpose of paying that obligor's bills, invoices or accounts without first obtaining a license as provided in this article or becoming an authorized delegate of a

licensee with respect to those activities. A licensee is under the jurisdiction of the [banking department].

(b) No person other than a corporation organized and in good standing under the laws of the state of its incorporation or a corporation organized under the laws of a country other than the United States and in good standing under the laws of the country of its incorporation and authorized to do business in this state, may apply for or be issued a license as provided in this [Act].

(c) A person conducts business activity regulated by this [Act] in this state if:

- (1) conduct constituting any element of the regulated activity occurs in this state;
- (2) conduct occurs outside this state and constitutes an attempt, offer or conspiracy to engage in the activity within this state and an act in furtherance of the attempt, offer or conspiracy occurs within this state; or
- (3) as part of a business activity described by this article a person knowingly transmits money into this state or makes payments in this state without disclosing the identity of each person on whose behalf the money was transmitted or the payment was made.

COMMENT

Licenses are required of those who engage in money transmission. Only corporations may be licensed, so as to simplify the job of regulation. Conduct occurs in the regulating state if it is connected with the state in ways that generally give a state criminal jurisdiction over the conduct. The state editor may wish to substitute state criminal code jurisdictional language for the analogous portion of this model.

Section 6. Exemptions.

- (a) This [Act] shall not apply to:
- (1) the United States or any department or agency of the United States; or
 - (2) this state, including any political subdivision of this state.
- (b) This [Act] shall not apply to the following when engaged in the regular course of their respective businesses except that each shall be subject to the requirements of the [Model Financial Transaction Reporting

Act]:

- (1) a bank, financial institution, holding company, credit union, savings and loan association, building and loan association, mutual bank or savings bank, whether organized under the laws of any state or of the United States; provided, however, that the entity does not engage in business regulated under this [Act] through authorized delegates;
- (2) a person who engages in check cashing or foreign money exchange and engages in other activity regulated under this [Act] only as an authorized delegate of a licensee acting within the scope of the contract between the authorized delegate and the licensee;
- (3) a person licensed to conduct the business of consumer loans;
- (4) a person licensed to conduct business as a debt management company;
- (5) a person licensed to conduct business as an escrow company;
- (6) a person licensed to conduct business as a trust company;
- (7) a person licensed to conduct business as a mortgage banker; or
- (8) a person licensed to conduct business as a collection agency.

COMMENT

Exemptions are provided liberally to reduce the cost of the act to a minimum both in terms of administration and in terms of regulation. This list should be modified to match the state's existing regulatory categories and terminology.

Section 7. Application for License.

Each application for a license shall be made in writing, under oath, and in the form prescribed by the [superintendent]. The application shall at least contain:

- (a) the exact, full name of the applicant, the date of incorporation and the state where incorporated, copies of the articles of incorporation for the applicant, the name and address of the statutory agent, and any fictitious or trade name used for the applicant;
- (b) the address of the applicant's principal place of business, the address of each location where the appli-

cant intends to transact business in this state, including any branch offices, and the name and address of each location of any authorized delegates;

(c) for each executive officer and director and each branch manager of the applicant or individual controlling person, and for each officer and director of any controlling person, unless the controlling person is a publicly traded company on a recognized national exchange and has assets in excess of five hundred million dollars (\$500,000,000):

- (1) a statement of personal history including but not limited to the person's name and any aliases or previous names used, date and place of birth, social security number, record of any criminal convictions, litigation history deemed significant under generally accepted accounting principles for the past ten years, and report of any bankruptcies filed individually or by any entity controlled by that person;
- (2) alien registration information, if applicable;
- (3) photographs and fingerprints taken by a state law enforcement agency; and if requested by the [superintendent]; and
- (4) copies of the most recent tax returns filed and signed waivers for verifying submitted tax returns with the Internal Revenue Service.;

(d) an identification statement for each branch manager and responsible individual including:

- (1) name and any aliases or previous names used;
- (2) date and place of birth;
- (3) social security number;
- (4) record of criminal convictions, excluding traffic offenses;
- (5) alien registration information, if applicable; and
- (6) employment history and residence addresses for the preceding fifteen years.;

(e) the name and address of each authorized delegate;

(f) the identity of any account in any financial institution through which the applicant intends to conduct any business regulated under this article, including the account name, the account number, and the name and address of the financial institution; and

(g) a financial statement audited by a licensed independent certified public accountant.

COMMENT

License applications and the licensing process are described. The superintendent or other appropriate official has the power to prescribe the application form. The application is the first bulwark protecting the legitimate majority of industry members from entry by those who would bring discredit on the industry, and the first source of information for investigators when things go wrong. It should be comprehensive.

Section 8. Fee, Financial Statement and Bond.

(a) Each application for a license shall be accompanied by:

(1) an application fee of \$1,000 and a license fee of \$3,000. The license fee shall be refunded if the application is denied. No application fee shall be refunded. All application fees collected by the department under this [Act] shall be transmitted to the state treasurer and shall be set aside by the treasurer in a separate fund for the use of the [superintendent] in the administration and enforcement of this [Act];

(2) a financial statement, audited by a licensed independent certified public accountant, showing that the applicant's net worth is not less than one hundred thousand dollars (\$100,000) plus ten thousand dollars (\$10,000) for each location or authorized delegate, to a maximum of five hundred thousand dollars (\$500,000), calculated in accordance with generally accepted accounting principles;

(3) copies of any financial statements that the applicant has filed with the securities exchange commission within the past three years;

(4) if the applicant is a wholly owned subsidiary of a corporation that has filed financial statements with the securities exchange commission in any of the past three years, copies of those filings;

(5) a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety, except that an applicant or licensee who engages in no business regulated by this [Act] other than check cashing or foreign money exchange need not post the bond required by this subsection. The bond shall be in the amount of three hundred thousand dollars (\$300,000), said amount to be increased by twenty-

five thousand dollars (\$25,000) for each authorized delegate, to a maximum of one million dollars (\$1,000,000). The bond shall be conditioned on the faithful compliance of the licensee, including its directors, officers, authorized delegates and employees, with this [Act]. The bond shall be payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee, his authorized delegates or his employees, or to the state for the benefit of the person injured. Only one bond is required for any licensee irrespective of the number of officers, directors, employees, locations or authorized delegates of that licensee. The bond shall remain in effect until cancelled by the surety, which cancellation may be had only after thirty (30) days written notice to the [superintendent]. That cancellation does not affect any liability incurred or accrued prior to the termination of that thirty (30) day period.;

(6) a sample of the contract that the applicant proposes to use in its creation of authorized delegates, if any;

(7) a sample form of the payment instrument that the applicant proposes to issue, if any; and

(8) a statement identifying each clearing bank that the applicant intends to use in business regulated under this [Act].

(b) A licensee shall maintain a net worth that satisfies the requirements of subsection (a) of this section.

(c) If a person injured by the wrongful act, default, fraud or misrepresentation of the licensee, his authorized delegates or his employees commences an action for a judgment to collect from the bond, the person shall notify the [superintendent] of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the [superintendent] on request.

(d) In lieu of the surety bond prescribed in this section, an applicant for a license or a licensee may deposit with the [superintendent] cash or alternatives to cash in the amount of the required bond.

(e) In lieu of the surety bond prescribed in this section, the applicant or a licensee may make deposits with any federally insured banking institution or savings and loan association in this state designated by the applicant and approved by the [superintendent]. These deposits may include, subject to the approval of the [superintendent], cash, securities, interest-bearing

stocks and bonds, notes, debentures or other obligations of the United States or agency or instrumentality of the United States or guaranteed by the United States or of this state or any subdivision of this state, of an aggregate amount at all times of not less than the amount of the required surety bond, based upon principal amount or market value, whichever is lower.

(f) The [superintendent] shall transmit the cash received under this section to the state treasurer. The state treasurer shall hold the cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned. The state treasurer may impose a fee to reimburse the state treasurer for its administrative expenses. The fee shall not exceed one hundred dollars (\$100) for each cash deposit and shall be paid by the applicant or licensee.

(g) In addition to any other terms and conditions that the [superintendent] prescribes by rule or order, the principal amount of the deposits made under subsections (d) or (e) of this section shall be released only on written authorization of the [superintendent] or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released to the licensee before the expiration of five years from the first to occur of:

(1) the date of substitution of a bond for an alternative deposit unless the [superintendent] determines in his discretion that the bond constitutes adequate security for all past, present or future obligations of the licensee. After that determination the cash alternative may be immediately released;

(2) the surrender of the license;

(3) the revocation of the license; or

(4) the expiration of the license.

(h) Notwithstanding subsections (a) through (g) of this section, if the required amount of the bond is reduced, whether by change in the number of authorized delegates or by legislative action, a cash deposit in lieu of that bond shall not be correspondingly reduced but shall be maintained at the higher amount until the expiration of five years from the effective date of the reduction in the required amount of bond, unless the [superintendent] in his discretion determines otherwise.

COMMENT

Fees in the model are set at a level designed to make the regulatory function self-supporting. The net worth statement is set at a relatively modest level, with a capped sliding scale to adjust roughly for licensee size. The bond requirement presents a more formidable barrier to entry by unstable companies. The \$1,000,000 cap is substantially below the present requirements of some states. Two alternatives to the bond requirement are provided. The applicant may post cash or alternatives to cash with the superintendent or other appropriate official, or may deposit specified liquid assets in the amount of the bond.

Section 9. Issuance of License; Renewal; Branch Office Licenses; Change in Location.

(a) On the filing of a complete application, the [superintendent] shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. In his discretion, the [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. The [superintendent] shall issue a license to an applicant if the [superintendent] finds that:

- (1) the applicant has fulfilled the requirements of Sections 7 and 8;
- (2) the applicant has not been convicted of a felony within the past ten (10) years;
- (3) no officer, director or controlling person has been convicted of a felony within the past ten (10) years;
- (4) the competence, experience, and integrity of the officers, directors, controlling persons and any proposed management personnel indicates that it would be in the interest of the public to permit that person to participate in the affairs of a licensee; and
- (5) the applicant has paid the required license fee.

(b) The [superintendent] shall submit to the [appropriate agency, e.g. department of public safety] and to the attorney general the name, fingerprints, and photograph of any applicant or licensee and the name, fingerprints, and photograph of any incorporator, director, officer, member or individual controlling person of any applicant within fourteen (14) days after receipt of any application. The [appropriate agency, e.g. depart-

ment of public safety] shall report to the [superintendent] and the attorney general the criminal record, if any, of that person within ninety (90) days of receipt of the request of the [superintendent].

(c) The [superintendent] shall approve or deny every application for an original license within one hundred twenty (120) days after the date an application is complete, which period may be extended by the written consent of the applicant. The [superintendent] shall notify the applicant of the date when the application is determined to be complete. In the absence of approval or denial of the application, or the applicant's consent to the extension of the one hundred twenty (120) day period, the application is deemed approved and the [superintendent] shall issue the license effective as of the first business day after that one hundred twenty (120) day period or any extended period.

(d) Licensees shall pay a renewal fee of fifteen hundred dollars (\$1,500) on or before the first day of [a month that is selected by the department to fit its yearly work cycle, e.g. November] of each year. The renewal fee shall be accompanied by a renewal application in the form prescribed by the [superintendent]. A license for which no renewal fee and application has been received by the first of [November] shall be suspended. A licensee may renew a suspended license no later than the first of [the month following the month selected for payment, e.g. December] of the year of expiration by paying the renewal fee plus one hundred dollars (\$100) for each day the renewal fee and application were not received by the [superintendent]. A license expires on the first day of [the cut-off month, e.g. December] of each year, unless earlier renewed, surrendered or revoked. A license shall not be granted to the holder of an expired license or to an incorporator, director, or officer of that licensee except upon compliance with the requirements provided in this [Act] for an original license, including the payment of the fee.

(e) A licensee shall designate and maintain a principal place of business for the transaction of business regulated by this [Act]. If the licensee maintains one or more places of business in this state, the licensee shall designate a place of business in this state as its principal place of business for purposes of this [Act]. The license shall specify the address of the principal place of business. The licensee shall designate a responsible individual for its principal place of business.

(f) If a licensee maintains one or more locations in this state in addition to a principal place of business, and those locations are to be under the control of the licensee and not under the control of authorized delegates pursuant to section 10, the licensee shall obtain a branch office license from the [superintendent] for each additional location by filing an application as required by the [superintendent] at the time the licensee files its license application. If branch offices are added from time to time by the licensee, the licensee shall file an application for a branch office license with the [superintendent] with the licensee's next quarterly fiscal report, as prescribed in section 13. If the [superintendent] determines that it would be in the interest of the public, the [superintendent] shall issue a branch office license. The license shall indicate on its face the address of the branch office and shall designate a manager for each branch office to oversee that office. The [superintendent] may disapprove the designated manager then or at any later time if the [superintendent] finds that the competence, experience and integrity of the branch manager warrants disapproval. An individual may be designated as the manager for more than one branch. The licensee shall submit a fee of fifteen hundred dollars (\$1,500) for each branch office license.

(g) A licensee shall prominently display the money transmitter license in its principal place of business and the branch office license in each branch office. Each authorized delegate shall prominently display at each location a notice, in a form prescribed by the [superintendent], that said authorized delegate is an authorized delegate of a licensee under this [Act].

(h) If the address of the principal place of business or any branch office is changed, the licensee shall immediately notify the [superintendent] in writing of the change.

COMMENT

The licensing process includes a specific list of the requirements for licensure, including lack of criminal records of the applicant and each key person. This section provides for exchange of criminal history data needed for a proper records check. Licenses must be timely processed, and renewed on an annual basis thereafter. Branch offices may be opened without advance permission, but are to be reported quarterly. Licenses are to be prominently displayed, so that any officer in the field will know if a non-licensing violation is occurring.

Section 10. Authorized Delegates of Licensees.

(a) A licensee may conduct the business regulated under this [Act] at one or more locations within this state through authorized delegates designated by the licensee from time to time, if the licensee has a net worth of at least five hundred thousand dollars (\$500,000) plus twenty-five thousand dollars (\$25,000) for each authorized delegate, not to exceed one million dollars (\$1,000,000) according to financial statements calculated in accordance with generally accepted accounting principles audited by a licensed independent certified public accountant.

(b) Each contract between a licensee and an authorized delegate shall require the authorized delegate to operate in full compliance with the law and shall contain as an appendix a current copy of this [Act]. The licensee shall provide each authorized delegate with operating policies and procedures sufficient to permit compliance by the delegate with all applicable laws, rules and regulations. The licensee shall promptly update the policies and procedures to permit compliance with those laws, rules and regulations.

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

- (1) the authorized delegate has violated, is violating or is about to violate any applicable law, rule, or regulation or any order of the [superintendent];
- (2) the authorized delegate has failed to cooperate with any examination or investigation by the [superintendent] or the attorney general as authorized by this [Act];
- (3) the competence, experience, or integrity of the authorized delegate or any controlling person of the authorized delegate indicates that it would not be in the interest of the public to permit that person to participate in business regulated under this [Act];
- (4) the financial condition of the authorized delegate might jeopardize the interests of the public in the conduct of business regulated under this article; or
- (5) the authorized delegate has engaged, is engaging or is about to engage in any unsafe or unsound

act or practice or transaction or any act, practice or transaction which constitutes a violation of this [Act] or of any rule or any order of the [superintendent].

(d) Any business for which a license is required by this article conducted by an authorized delegate outside the scope of authority conferred in the contract between the authorized delegate and the licensee is unlicensed activity.

(e) An authorized delegate of a licensee holds in trust for the benefit of the licensee all monies received from the sale or delivery of the licensee's payment instruments or monies received for transmission. If an authorized delegate commingles any of those monies with any monies or other property owned or controlled by the authorized delegate, a trust against all commingled proceeds and other monies or property controlled by the delegate is imposed in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(f) An authorized delegate is subject to examination by the [superintendent] at the discretion of the [superintendent] pursuant to [reference to general examination authority]. The licensee is responsible for the payment of an assessment for the examination of its authorized delegates only to the extent that the examination relates to the activities conducted by the authorized delegate on behalf of the licensee. The assessment shall be made at the rate set by the [superintendent] for the examination of financial institutions [pursuant to general examination assessments, if any], and payment of that assessment shall be made in accordance with the requirements of [reference to general examination provisions].

COMMENT

Authorized delegates are permitted for licensees with a net worth over \$500,000. Notice of the [Act] to delegates is assured, as is provision of each delegate with policies and procedures relating to compliance with all applicable laws, rules and regulations. Cease and desist orders are authorized in connection with the licensee or an authorized delegate. The relationship between the licensee and their authorized delegate is defined, including the imposition of a trust for the benefit of the licensee on monies received by the delegate from the sale of licensee's financial products or services. Examinations of delegates is authorized and costs are assessed to the licensee or delegate.

Section 11. Suspension or Revocation of Licenses.

The [superintendent] may suspend or revoke a license and may order a licensee to revoke the designation of an authorized delegate whose conduct has contributed to the event pursuant to [reference to state administrative procedures provision] if the [superintendent] finds that:

(a) the licensee has made a material misstatement or suppressed or withheld information on the application for license or any document required to be filed with the [superintendent];

(b) any fact or condition exists that, if it had existed or had been known at the time when the licensee applied for its license, would have been grounds for denying the application.;

(c) the licensee's net worth becomes inadequate and the licensee after ten (10) days written notice from the [superintendent] fails to furnish the capital required by this [Act];

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

(e) the licensee has violated any provision of the [Model Money Laundering Act] or any provision included in the definition of specified unlawful activity in the [Model Money Laundering Act] or has violated any rule, regulation adopted pursuant to this [Act] or any order of the superintendent;

(f) an authorized delegate of the licensee has violated any provision of the [Model Money Laundering Act] or any provision included in the definition of specified unlawful activity in the [Model Money Laundering Act] or has violated any rule or regulation adopted pursuant to this [Act] or any order of the [superintendent] as a result of a course of negligent failure to supervise or as a result of the willful misconduct of the licensee;

(g) the licensee or any authorized delegate of the licensee refuses to permit the [superintendent] or the attorney general to make any examination or investigation authorized by this [Act];

(h) the licensee or any authorized delegate of the licensee knowingly fails to make any report required by this [Act];

(i) the licensee fails to pay a judgment entered in favor of a claimant, plaintiff or creditor in an action arising out of the licensee's business regulated under this [Act], within thirty (30) days after the judgment becomes final or within thirty (30) days after expiration or termination of a stay of execution or other stay of proceedings, whichever is later. If execution on the judgment is stayed by court order, operation of law or otherwise, proceedings to suspend or revoke the license for failure of the licensee to pay that judgment may not be commenced by the [superintendent] under this subsection until thirty (30) days after that stay;

(j) the licensee has been convicted in any state of a felony or of any crime of breach of trust or dishonesty; or

(k) the licensee has exhibited a pattern of failure or refusal to promptly pay lawful and enforceable obligations on payment instruments or transmissions of money.

COMMENT

Suspension or revocation of a license may be done only after a hearing in accordance with the state's general administrative procedures and if a circumstance from a specific list of circumstances is found to exist. Licensee violation of money laundering prohibitions is specified on the list, as is delegate violation of money laundering prohibitions done "as a result of a course of negligent failure to supervise or as a result of the willful misconduct of the licensee." Strict liability for the conduct of delegates would encourage more screening and closer policing of delegates by licensees, but in some cases it could result in dire consequences disproportionate to the social harm involved.

Section 12. Hearings.

No license may be suspended or revoked except after a hearing held by [superintendent]. The [superintendent] shall also hold a hearing when properly requested to do so by an applicant whose application for a license has been denied. The [superintendent] shall give the licensee or applicant at least ten (10) days written notice of the time and place of those hearings by registered or certified mail addressed to the licensee or applicant at its last known address. Any order of the [superintendent] suspending, revoking or denying a license shall state the grounds it is based on and shall not be effective until ten (10) days after written notice of the order has been sent by registered mail or certified mail to the licensee or appli-

cant at its last known address. Any hearing required by this section shall be conducted on the record. Witnesses shall be sworn and evidence presented to the [superintendent] shall be appropriately identified and preserved. The [superintendent] is hereby granted subpoena powers to compel the production of physical items and the attendance of witnesses. Any notice required under this section shall be deemed served on the third business day after the [superintendent] mails it. A licensee may seek court review of the superintendent's findings and order.

COMMENT

Hearing procedures are described. This section will be unnecessary when reference to existing hearing provisions is adequate, or when such provisions can be incorporated.

Section 13. Reports.

(a) The [superintendent] may require reports of any licensee or authorized delegate, under penalty of perjury or otherwise, concerning the licensee's or authorized delegate's business conducted pursuant to the license issued under this [Act], as the [superintendent] may deem necessary for the enforcement of this [Act].

(b) Each licensee shall file with the [superintendent], within forty-five (45) days after the end of each fiscal quarter, a financial statement including a balance sheet, income and expense statements and a current list of all authorized delegates, branch managers, responsible individuals and locations within this state that have been added or terminated by the licensee within the fiscal quarter. Information regarding branch managers and responsible individuals shall include the information prescribed in Section 7, subsection (c) of this [Act]. For locations and authorized delegates, the licensee shall include the name and street address of each location and authorized delegate. The [superintendent] may extend the forty-five (45) day period on application of the licensee.

(c) A licensee who fails to file any report required by this section on or before the day designated for making the report, or fails to include any prescribed matter in the report, shall pay a penalty of one hundred dollars (\$100) for every day that the report is delayed or incomplete, unless the [superintendent], for good cause shown, reduces the amount to be paid, or unless the time to file the report was extended in writing by the [superintendent].

(d) (1) The [superintendent] may, in his discretion, conduct an on-site examination of a licensee to determine compliance with this [Act]. The licensee shall pay the reasonable costs of the on-site examination. If the [superintendent] finds, based on the licensee's financial statements and past history of operations in this state, that an on-site examination is unnecessary, the [superintendent] may waive the on-site examination.

(2) The on-site examination may be conducted in conjunction with examinations performed by representatives of agencies of this state or of another state or of the federal government.

(3) The [superintendent], in lieu of an on-site examination, may accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent certified public accountant, and reports so accepted are considered for all purposes as an official report of the department for all purposes.

(e) Each licensee shall file with the [superintendent] within fifteen (15) days of its occurrence, a report of:

- (1) filing for bankruptcy or reorganization;
- (2) institution of license revocation proceedings; or
- (3) a felony indictment or conviction of the licensee or of an officer, director, controlling person, branch manager, responsible individual or authorized delegate related to licensed activity or involving conduct defined as money laundering or specified unlawful activity in the [Model Money Laundering Act].

COMMENT

Reports may be requested of licensees, and some reports are required quarterly. Reports are essential to the regulation of problem delegates or licensees. On-site examinations are authorized, and may be coordinated with examinations by other agencies. This provision is a great cost saver for both regulators and industry members, and is strongly encouraged by such organizations as the Money Transmitter Regulators Association (MTRA), through mutual assistance and information exchange agreements. Certain alarming events must be immediately reported to the [superintendent], including a money laundering allegation against a delegate or key person. Such a charge would trigger an intensive review of the circumstances of the case, the preventive measures in place and their effectiveness to prevent money laundering in the future.

Section 14. Investments.

(a) Every licensee shall maintain at all times permissible investments that comply with either:

(1) a market value, computed in accordance with generally accepted accounting principles, of not less than the aggregate amount of all of its outstanding payment instruments; or

(2) a net carrying value, computed in accordance with generally accepted accounting principles, of not less than the aggregate amount of all of its outstanding payment instruments, provided the market value of these permissible investments is at least ninety-five percent of the net carrying value.

(b) Notwithstanding any provision of this [Act], the [superintendent] shall have, with respect to any particular licensee or all licensees, the authority to limit the extent to which any class of investments defined as permissible in subsection (h) of section 4 may be considered a permissible investment, except for money and certificates of deposit. The [superintendent] may by rule prescribe other types of investments which may be considered a permissible investment under this [Act].

COMMENT

Permissible investments must be sufficient to cover outstanding payment instruments at any given time. They are defined at length in the definitions, and may also include customized categories designated by rule, allowing flexibility to meet special circumstances.

Section 15. Records.

(a) Each licensee shall keep and use in its business books, accounts and records in accordance with generally accepted accounting principles that will enable the [superintendent] to determine whether that licensee is complying with the provisions of this [Act]. Each licensee and authorized delegate shall preserve its records for at least five years after making the final entry on any transaction. Each authorized delegate shall keep records as required by the [superintendent].

(b) For each authorized delegate, the licensee shall maintain records that demonstrate that the licensee conducted a reasonable background investigation of that authorized delegate. A licensee shall preserve those records for at least five years after the most

recent designation of that authorized delegate by the licensee.

(c) The records of the licensee regarding business regulated under this [Act] shall be maintained at its principal place of business or, with notice to the [superintendent], at another location designated by the licensee. If the records are maintained outside this state, the [superintendent] may require that the licensee make those records available to the [superintendent] at his office not more than five business days after demand. The [superintendent] may further require that those records be accompanied by an individual who will be available to answer questions regarding those records and the business regulated under this [Act]. The [superintendent] may require the appearance of a specific individual, or request the licensee to designate an individual knowledgeable with regard to the records and the business. The individual appearing with the records shall be available to the [superintendent] for up to three business days.

(d) For the purpose of enforcing this [Act], the [superintendent], or his designated representative, and the attorney general, shall have and be given free access to the offices and places of business, files, safes and vaults of any licensee or authorized delegate and may require the attendance of any person and examine him under oath about that business or the subject matter of any examination, investigation or hearing.

COMMENT

The creation, preservation and accessibility of records is essential to enforcement action. Records of the background investigation of delegates protect the licensee from charges of negligent supervision and assist investigators if a delegate is suspected of wrongdoing.

Section 16. Liability of Licensees.

Every licensee is liable for the payment of all moneys covered by payment instruments that it sells or issues in any form in this state, whether directly or through an authorized delegate and whether as a maker or a drawer, or money received for obligors or for transmission by any means, whether or not that instrument is a negotiable instrument under the laws of this state.

COMMENT

Liability of licensees for their outstanding paper or ser-

vices is the foundation of consumer confidence. Consumers cannot be expected to rely on the solvency of authorized delegates.

Section 17. Notice of Source of Instrument; Transaction Records.

(a) Every payment instrument sold by a licensee directly or through an authorized delegate shall bear the name of the licensee and a unique consecutive number clearly stamped or imprinted on it.

(b) For every transaction involving the receipt of money from a customer, the licensee or authorized delegate who receives the money shall maintain written records of the transaction. The records may be reduced to computer or other electronic medium. The records collectively shall contain the name of the licensee, the street address of the location where the money was received, the name and street address of the customer if reported to the licensee or authorized delegate, the approximate date of the transaction, the name or other information from which, together with other contemporaneous records, the [superintendent] can determine the identity of those employees of the licensee or authorized delegate who conducted the transaction and the amount of the transaction. The information required by this section shall be available through the licensee or authorized delegate who received the money for at least five years from the date of the transaction.

COMMENT

Identification of specific payment instruments and receipts for cash transactions assist consumers in identifying the source of the instrument and recipient of their money, and assist investigators following a group or pattern of sales. Care has been taken not to create a receipt requirement that is too burdensome to the industry.

Section 18. Acquisition of Control.

(a) A person shall not directly or indirectly acquire control of a licensee or controlling person without the prior written approval of the [superintendent], except as otherwise provided by this section.

(b) An application for approval to acquire control of a licensee shall be in writing in a form prescribed by the [superintendent] and shall be accompanied by any information, data and records the [superintendent]

requires. The application shall be accompanied by a fee of five hundred dollars (\$500). The [superintendent] shall approve or deny every application for approval to acquire control of a licensee within one hundred twenty (120) days after the date on which the application is complete, unless the applicant consents in writing to an extended period. The [superintendent] shall notify the applicant of the date when the application is determined to be complete. Any application not denied or approved within this period shall be deemed approved as of the first business day after the expiration of that period.

(c) The [superintendent] shall deny the application to acquire control of a licensee if he finds the acquisition of control is contrary to law or determines that disapproval is reasonably necessary to protect the interest of the public. In making that determination, the [superintendent] shall consider:

(1) whether the financial condition of the person seeks to control the licensee might jeopardize the financial condition of the licensee or the interests of the public in the conduct of the business regulated under this [Act]; and

(2) whether the competence, experience, and integrity of the person who seeks to control the licensee, or the officers, directors and controlling persons of the person who seeks to control the licensee, indicate that it would not be in the interest of the public to permit that person to control the licensee.

(d) Nothing in this section prohibits a person from negotiating or entering into agreements subject to the condition that the acquisition of control will not be effective until approval of the [superintendent] is obtained.

(e) This section does not apply to:

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

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

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

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

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

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

(f) Before filing an application for approval to acquire control, a person may request in writing a determination from the [superintendent] as to whether that person will be deemed in control, upon consummation of a proposed transaction. If the [superintendent] determines in response to that request that the person will not be in control within the meaning of this [Act], the [superintendent] shall enter an order to that effect and the proposed transaction is not subject to the requirements of this section.

COMMENT

Control and acquisition of a licensed business is a familiar problem in all regulated industries. This provision allows contingent negotiation and agreement, subject to later regulatory approval. It also provides special treatment for certain methods of acquisition, such as inheritance.

Section 19. Injunctions.

If it appears to the [superintendent] that any person has committed or is about to commit a violation of any provision of this [Act] or of any rule or order of the [superintendent], the [superintendent] may apply to the superior court for an order enjoining that person from violating or continuing to violate this [Act] or any rule or order and for injunctive or other relief as the nature of the case may require.

COMMENT

The injunctive powers provided here are essential, but may be granted by reference to more general provisions, making this provision itself unnecessary.

Section 20. Appointment of [Superintendent] as Agent for Service of Process; Forwarding of Process; Consent to Jurisdiction.

(a) A licensee, an authorized delegate, or a person who knowingly engages in business activities that are regulated under this [Act] with or without filing an application, is deemed to have:

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

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

(b) Within three business days after service of process on the [superintendent] the [superintendent] shall transmit by certified mail copies of all lawful process accepted by the [superintendent] as an agent to that person at its last known address. Service of process shall be considered complete three business days after the [superintendent] deposits the process in the United States mail.

COMMENT

Obtaining judicial and regulatory jurisdiction over persons who have not applied for a license is especially important in light of experience that indicates simple avoidance of licensing is common among money transmitters who would not be in compliance if they attempted to get licensed.

Section 21. Prohibited Transactions.

A person shall not engage in conduct requiring a license under this [Act] as an authorized delegate of a principal if that principal is not licensed under this [Act]. A person who does so shall be deemed to be the principal seller, issuer or actor, and not merely an authorized delegate, and is liable to the holder, remitter or customer as the principal.

COMMENT

The principle of fixing liability to consumers requires that purported delegates whose alleged principal is not in fact licensed be liable as the principal.

Section 22. Criminal Penalties.

(a) A person who directly or through another violates or attempts to violate any provision of this [Act] for

which a different penalty is not specifically provided is guilty of a [reference to state classification] felony. Each transaction in violation of this [Act] and each day that a violation continues shall be a separate offense.

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

(c) Any person who refuses to permit any lawful investigation by the [superintendent] or attorney general shall be guilty of a [reference to state classification] felony.

COMMENT

General criminal penalties for all violations are typical of regulatory codes. Reference to a general provision may make this section unnecessary. False statements and other misrepresentations go to the heart of the regulatory process, and therefore are treated separately to provide a more severe grade of felony.

Section 23. Civil Penalties.

(a) Any person who knowingly violates any provision of this [Act] shall be assessed a civil penalty in an amount equal to the gross business conducted in connection with the violation plus the state's costs and expenses of the investigation and prosecution of the matter, including reasonable attorney fees.

(b) The attorney general [banking department/regulative agency which will have authority] may bring an action in the superior court of the county in which a violation of this section is alleged to have occurred or in any other county in which venue is permitted under [reference to state venue statutes and rules] in the same manner as the filing of other actions.

COMMENT

Civil penalties are set at amounts that are directly connected to the conduct involved. This automatic sliding scale allows for substantial remedies in appropriate cases, and eliminates the possibility that the civil remedies will be abused by cumulating multiple set penalties or regarded as punishment under *United States v. Halper*, 109 S. Ct. 1892 (1989).

Section 24. Records; Disclosure.

(a) Except as otherwise provided by this [Act], the records of the department relating to financial institutions are not public documents and are not open for inspection by the public and neither the [superintendent] nor any member of his staff shall disclose any information obtained in the discharge of his official duties to any person not connected with the department, except that the [superintendent] may disclose that information:

- (1) to representatives of federal agencies insuring accounts in the financial institution;
 - (2) to representatives of state or federal agencies and foreign countries having regulatory or supervisory authority over the activities of the financial institution or similar financial institutions if those representatives are permitted to and do, upon request of the [superintendent], disclose similar information respecting those financial institutions under their regulation or supervision or to those representatives who state in writing under oath that they shall maintain the confidentiality of that information;
 - (3) to the attorney general of this state;
 - (4) to a federal, state or county grand jury in response to a lawful subpoena; or
 - (5) to the auditor general of this state for the purpose of conducting audits authorized by law.
- (b) The [superintendent] may:
- (1) disclose the fact of filing of applications with the department pursuant to this [Act], give notice of a hearing, if any, regarding those applications, and announce his action thereon;
 - (2) disclose final decisions in connection with proceedings for the suspension or revocation of licenses or certificates issued pursuant to this [Act];
 - (3) prepare and circulate reports reflecting the assets and liabilities of financial institutions, including other information considered pertinent to the purpose of each report for general statistical information; or
 - (4) prepare and circulate reports provided by law.
- (c) Every official report of the department is prima facie evidence of the facts therein stated in any action or proceeding wherein the [superintendent] is a party.

(d) Nothing in this section shall be construed to prevent the disclosure of information that is admissible in evidence in any civil or criminal proceeding brought by or at the request of the [superintendent] or this state to enforce or prosecute violations of this [Act] or the rules, regulations or orders issued or promulgated pursuant to this [Act].

COMMENT

Some of the records created under the [Act] have special privacy and competitive implications. If these concerns are not adequately addressed by the general law applicable to records held by the [superintendent] or other appropriate official, a provision like this will be necessary to balance the needs for confidentiality and information flow.

Section 25. Promulgation of Rules.

All rules promulgated by the [superintendent] pursuant to this [Act] shall be in accordance with [reference to state law]. At the time the [superintendent] files a notice of proposed adoption, amendment or repeal of a rule with the secretary of state, a copy of the notice will be sent by regular United States mail to all then current licensees and applicants for licenses under this [Act].

COMMENT

Care must be taken to mesh this [Act] with existing law relating to promulgation of rules, and to assure licensees of adequate notice of proposed adoption, amendment or repeal of rules, if not already provided for in the general law.

Section 26. 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 27. Severability.

If any provisions 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.

Section 28. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date]. All persons engaged in activities within this state encompassed by this [Act] on the date it becomes effective shall file applications in accordance with Sections 7 and 8 on or before the date this [Act] becomes effective. No person shall be deemed to be in violation of any provision of this [Act] if the application of that person is timely filed unless and until the application is denied.

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.