

SUBSTITUTE FOR
HOUSE BILL NO. 5328

A bill to regulate the money transmission services business; to require the licensing of persons engaged in providing money transmission services; to prescribe powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "money
2 transmission services act".

3 Sec. 2. As used in this act:

4 (a) "Agency" means the office of financial and insurance
5 services in the department of labor and economic growth.

6 (b) "Applicant" means a person that files an application for a
7 license under this act.

1 (c) "Authorized delegate" means a person that a licensee
2 designates to provide money transmission services in this state on
3 behalf of the licensee.

4 (d) "Commissioner" means the commissioner of the office of
5 financial and insurance services.

6 (e) "Control" means any of the following:

7 (i) Ownership of, or the power to vote, directly or indirectly,
8 at least 25% of a class of voting securities or voting interests of
9 a licensee or person in control of a licensee.

10 (ii) Power to elect a majority of executive officers, managers,
11 directors, trustees, or other persons exercising managerial
12 authority of a licensee or person in control of a licensee.

13 (iii) The power to exercise directly or indirectly a controlling
14 influence over the management or policies of a licensee or person
15 in control of a licensee.

16 (f) "Control person" means a director, manager, or executive
17 officer of a licensee or a natural person who has the authority to
18 participate in the direction, directly or indirectly through 1 or
19 more other natural persons, of the management or policies of a
20 licensee.

21 (g) "Depository financial institution" means a bank, national
22 bank, savings and loan association, savings bank, or credit union
23 organized under the laws of this state, another state, the District
24 of Columbia, the United States, or a territory or protectorate of
25 the United States whose deposits are insured by an agency of the
26 federal government.

27 (h) "Executive officer" means an officer, member, or partner

1 of a licensee, including, but not limited to, a chief executive
2 officer, president, vice president, chief financial officer,
3 controller, compliance officer, or any other similar position.

4 (i) "Financial licensing act" means any of the financial
5 licensing acts, as that term is defined in section 2 of the
6 consumer financial services act, 1988 PA 161, MCL 487.2052.

7 (j) "Licensee" means a person licensed or required to be
8 licensed under this act.

9 (k) "Location" means a place of business at which activities
10 regulated by this act occur.

11 Sec. 3. As used in this act:

12 (a) "Material litigation" means litigation that, according to
13 generally accepted accounting principles, is significant to an
14 applicant's or a licensee's financial health and must be disclosed
15 in the applicant's or licensee's audited financial statements,
16 report to shareholders, or similar records.

17 (b) "Money" means a medium of exchange authorized or adopted
18 by the United States or a foreign government as a part of its
19 currency that is customarily used and accepted as a medium of
20 exchange in the country of issuance. The term includes a monetary
21 unit of account established by an intergovernmental organization or
22 by agreement between 2 or more governments.

23 (c) "Money transmission services" means selling or issuing
24 payment instruments or stored value devices or receiving money or
25 monetary value for transmission. The term does not include the
26 provision solely of delivery, online, or telecommunications
27 services or network access.

1 (d) "Outstanding payment instrument" means any check, draft,
2 money order, travelers check, other written instrument, electronic
3 or wire transfer, stored value device, or facsimile issued by a
4 licensee that has been sold in the United States directly by the
5 licensee or any payment instrument issued by the licensee that has
6 been sold by the licensee or an authorized delegate in the United
7 States, that has been reported to the licensee as having been sold,
8 and that has not yet been paid by or for the licensee.

9 (e) "Payment instrument" means any electronic or written
10 check, draft, money order, travelers check, or other wire,
11 electronic, or written instrument or order for the transmission or
12 payment of money, sold or issued to 1 or more persons, whether or
13 not the instrument is negotiable. The term includes any stored
14 value device or facsimile. The term does not include any credit
15 card voucher, letter of credit, or tangible object redeemable by
16 the issuer in goods or services.

17 (f) "Person" means an individual, partnership, association,
18 corporation, limited liability company, trust, estate, joint
19 venture, government, governmental subdivision, agency or
20 instrumentality, public corporation, or any other legal entity.

21 (g) "Record" means information that is inscribed on a tangible
22 medium or that is stored in an electronic or other medium and is
23 retrievable in perceivable form.

24 (h) "State" means a state of the United States, the District
25 of Columbia, Puerto Rico, the United States Virgin Islands, or any
26 territory or protectorate of the United States.

27 (i) "Stored value device" means a card or other tangible

1 object used for the transmission or payment of money that contains
2 a microprocessor chip, magnetic stripe, or other means for the
3 storage of information; that is prefunded; and the value of which
4 is reduced after each use. The term does not include a tangible
5 object the value of which is redeemable in the issuer's goods and
6 services.

7 (j) "Travelers check" means an instrument for the payment of
8 money or a foreign currency instrument in any denomination that
9 provides for both of the following:

10 (i) A specimen signature of the purchaser to be completed at
11 the time of purchase of the instrument.

12 (ii) A countersignature of the purchaser to be completed when
13 the instrument is negotiated.

14 Sec. 4. This act does not apply to any of the following:

15 (a) The United States or a department, agency, or
16 instrumentality of the United States.

17 (b) Money transmission services provided by the United States
18 postal service or by a contractor on behalf of the United States
19 postal service.

20 (c) A state, county, city, or any other governmental
21 subdivision of a state.

22 (d) A depository financial institution, office of an
23 international banking corporation, or branch of a foreign bank; a
24 bank holding company or subsidiary, as those terms are defined in
25 section 2(a)(1) and 2(d) of the bank holding company act of 1956,
26 12 USC 1841; a bank service company organized under the bank
27 service company act, 12 USC 1861 to 1867; a subsidiary or affiliate

1 of a depository financial institution, or a subsidiary or affiliate
2 of a holding company of a depository financial institution, if the
3 depository financial institution maintains its main office or a
4 branch office in this state; a credit union service organization,
5 as that term is defined in section 102 of the credit union act,
6 2003 PA 215, MCL 490.102; or a corporation organized under the Edge
7 act, 12 USC 611 to 633.

8 (e) Electronic funds transfer of governmental benefits for a
9 federal, state, county, or governmental agency by a contractor on
10 behalf of the United States or a department, agency, or
11 instrumentality of the United States or a state or governmental
12 subdivision, agency, or instrumentality of a state.

13 (f) A board of trade designated as a contract market under the
14 commodity exchange act, 7 USC 1 to 27f, or a person that in the
15 ordinary course of business provides clearance and settlement
16 services for a board of trade, to the extent of its operation as or
17 for that board.

18 (g) A registered futures commission merchant under the federal
19 commodities laws, to the extent of its operation as a merchant.

20 (h) A person that provides clearance or settlement services
21 under a registration as a clearing agency or an exemption from
22 registration granted under the federal securities laws, to the
23 extent of its operation as a provider under this subdivision.

24 (i) An operator of a payment system, to the extent that it
25 provides processing, clearing, settlement, or other similar
26 services between or among persons excluded by this section in
27 connection with wire transfers, credit card transactions, debit

1 card transactions, stored value transactions, automated
2 clearinghouse transfers, or other similar funds transfers or
3 transactions.

4 (j) A person registered as a securities broker-dealer under
5 federal or state securities laws, to the extent of its operation as
6 a registered broker-dealer.

7 Sec. 11. (1) Except as otherwise provided in this section and
8 subject to section 4, a person shall not provide money transmission
9 services in this state after December 31, 2006 without a license
10 under this act or a class I license issued under the consumer
11 financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

12 (2) A person licensed under the sale of checks act, 1960 PA
13 136, MCL 487.901 to 487.916, on the day before the effective date
14 of this act may continue to provide money transmission services
15 under that license until December 31, 2006.

16 (3) A license under this act is not required for a person to
17 act as an authorized delegate of a person licensed under this act.

18 Sec. 12. (1) A person applying for a license under this act
19 shall apply on a form and in a medium prescribed by the
20 commissioner. The application shall include all of the following
21 information:

22 (a) The legal name and residential and business addresses of
23 the applicant and any assumed or trade name used by the applicant
24 in conducting its money transmission services business.

25 (b) A list of any criminal convictions of the applicant and
26 any material litigation in which the applicant was involved in the
27 10-year period preceding the submission of the application.

1 (c) A description of any money transmission services
2 previously provided by the applicant and the money transmission
3 services that the applicant intends to provide in this state.

4 (d) A list of the applicant's proposed authorized delegates
5 and the locations in this state where the applicant and its
6 authorized delegates propose to engage in providing money
7 transmission services.

8 (e) A list of all other states in which the applicant is
9 licensed to engage in providing money transmission services and any
10 license revocations, suspensions, or other disciplinary action
11 taken against the applicant in any other state.

12 (f) Information concerning any bankruptcy or receivership
13 proceedings affecting the applicant.

14 (g) The name and address of any depository financial
15 institution through which the applicant's payment instrument will
16 be paid.

17 (h) A description of the source of money and credit to be used
18 by the applicant to provide money transmission services.

19 (i) Any other information the commissioner reasonably requires
20 with respect to the applicant.

21 (2) If an applicant is not a natural person, the applicant
22 shall also provide all of the following information with the
23 application:

24 (a) The date of the applicant's incorporation or formation and
25 state or country of incorporation or formation.

26 (b) A brief description of the structure or organization of
27 the applicant, including any parent or subsidiary of the applicant,

1 and whether the applicant or a parent or subsidiary of the
2 applicant is publicly traded.

3 (c) The name, all assumed or trade names, and all business
4 addresses of the applicant.

5 (d) The name, all assumed or trade names, all business and
6 residential addresses, and the employment history for the 10-year
7 period preceding the submission of the application of each control
8 person of the applicant.

9 (e) A list of any criminal convictions and material litigation
10 in which any control person of the applicant has been involved in
11 the 10-year period preceding the submission of the application.

12 (f) If the applicant is publicly traded, a copy of the most
13 recent report filed with the securities and exchange commission
14 under section 13 of the federal securities exchange act of 1934, 15
15 USC 78m.

16 (g) If the applicant is a wholly owned subsidiary of a
17 corporation publicly traded in the United States, a copy of
18 financial statements for the parent corporation for the most recent
19 fiscal year or a copy of the parent corporation's most recent
20 report filed under section 13 of the federal securities exchange
21 act of 1934, 15 USC 78m.

22 (h) If the applicant is a wholly owned subsidiary of a
23 corporation publicly traded outside the United States, a copy of
24 any documentation similar to that described in subdivision (g) that
25 is filed with the regulator of the parent corporation's domicile
26 outside the United States.

27 (i) If the applicant has a registered agent in this state, the

1 name and address of that registered agent.

2 (j) Any other information the commissioner reasonably requires
3 with respect to the applicant.

4 Sec. 13. (1) At the time of filing an application for a
5 license under this act, an applicant shall provide the commissioner
6 with copies of the applicant's financial statements for the most
7 recent fiscal year and, if available, for the 2-year period
8 preceding the submission of the application. The financial
9 statements shall meet all of the following:

10 (a) If subdivision (b) does not apply, show that the
11 applicant's net worth exceeds \$100,000.00.

12 (b) If the applicant intends to engage in providing money
13 transmission services in this state at more than 1 location or
14 through authorized delegates, show that the applicant has a net
15 worth that equals or exceeds either the sum of \$100,000.00 plus an
16 additional \$25,000.00 for each location or authorized delegate, as
17 applicable, or \$1,000,000.00, whichever is less.

18 (c) Are in the form prescribed by the commissioner, except
19 that financial statements prepared by or reviewed by an independent
20 certified public accountant may be in the form prescribed by that
21 accountant.

22 (d) Are prepared in accordance with generally accepted
23 accounting principles.

24 (2) A licensee shall at all times maintain a net worth that
25 meets the amounts described in subsection (1) for its money
26 transmission services business.

27 (3) At the time of the filing of an application and at all

1 times after a license is issued, an applicant shall be registered,
2 if required, or otherwise qualified to do business in this state.

3 (4) An applicant shall include with an application for a
4 license under this act a nonrefundable application fee established
5 by the commissioner under section 15.

6 (5) An applicant shall include with an application for a
7 license under this act a surety bond that meets all of the
8 following:

9 (a) Is issued by a bonding company or insurance company
10 authorized to do business in this state and expires no earlier than
11 the date the license expires.

12 (b) Is in a principal amount of at least \$500,000.00 and not
13 more than \$1,500,000.00. The commissioner shall determine the
14 principal amount of this bond based on the number of locations and
15 authorized delegates of the applicant in this state.

16 (c) Is in a form satisfactory to the commissioner, is payable
17 to the commissioner for the benefit of any individuals who are
18 Michigan residents and who are creditors or claimants of the
19 applicant and its authorized delegates through purchase of a
20 payment instrument from the applicant or an authorized delegate
21 located in this state, and secures the faithful performance of the
22 obligations of the applicant and its authorized delegates with
23 respect to the receipt of money in connection with the conduct of
24 its money transmission services business.

25 (6) The aggregate liability of a surety under a bond issued
26 for purposes of subsection (5) shall not exceed the principal
27 amount of the bond.

1 Sec. 14. (1) When the commissioner receives a completed
2 application for a license under this act, the commissioner shall
3 investigate the financial condition and responsibility, financial
4 and business experience, character, and general fitness of the
5 applicant and may reasonably conduct a similar investigation of
6 each control person of the applicant under this subsection. The
7 commissioner may conduct an on-site investigation of the applicant.

8 (2) When the commissioner determines that an application for a
9 license under this act is complete, the commissioner shall promptly
10 notify the applicant in writing of the date on which he or she
11 determined that the application was complete and shall approve or
12 deny the application within 120 days after that date. Subject to
13 subsection (5), if the commissioner does not approve or deny an
14 application within that 120-day period, the commissioner shall
15 issue the license.

16 (3) The commissioner shall issue a license to an applicant
17 under this act if the commissioner determines all of the following:

18 (a) That the applicant has complied with sections 12, 13, and
19 16.

20 (b) That the financial condition and responsibility, financial
21 and business experience, character, and general fitness of the
22 applicant and the experience, character, and general fitness of
23 each control person and any shareholders of the applicant meet the
24 requirements of this act.

25 (c) That the applicant commands the confidence of the public
26 and warrants the belief that the applicant and its executive
27 officers will comply with the law.

1 (d) That the applicant has paid the license fee under
2 subsection (4).

3 (4) If an application for a license is approved under this
4 section, the licensee shall pay a license fee in an amount
5 established by the commissioner under section 15 within 30 days
6 after the date of approval.

7 (5) The commissioner may for good cause extend the 120-day
8 time period described in subsection (2).

9 (6) An applicant whose application is denied by the
10 commissioner under this act may appeal within 30 days after the
11 date of the notice of the denial and request a hearing on the
12 denial.

13 Sec. 15. (1) By December 31 of each year, the commissioner
14 shall establish a schedule of fees to be paid by applicants and
15 licensees during the next calendar year. In establishing license
16 fees, the commissioner shall consider each licensee's business
17 volume and number of locations and any other business factors he or
18 she considers reasonable in order to generate funds sufficient to
19 pay, but not to exceed, the office's reasonably anticipated costs
20 of administering this act.

21 (2) A license issued under this act expires on December 31 of
22 each year unless earlier suspended, surrendered, or revoked under
23 this act. A licensee may renew a license by filing an application
24 for a license renewal, in the form and medium prescribed by the
25 commissioner, and paying the license fee for the renewal year, on
26 or before the December 1 preceding the renewal year. The
27 commissioner shall not renew a license if the license fee for the

1 renewal term is not paid.

2 Sec. 16. (1) In addition to any fees established by the
3 commissioner, a licensee shall pay the actual travel, lodging, and
4 meal expenses incurred by any agency employee who travels outside
5 of this state to examine the records of the licensee or investigate
6 the licensee. An agency employee who incurs expenses under this
7 subsection shall comply with any applicable provisions of the
8 standardized travel regulations issued by the department of
9 management and budget and civil service commission.

10 (2) If any fees or fines provided for in this act are not paid
11 when required, the commissioner may maintain an action against the
12 licensee for the recovery of the fees or fines, interest, costs,
13 and reasonable legal fees.

14 (3) The fees and civil and administrative fines collected
15 under this act shall be paid into the state treasury to the credit
16 of the agency and used only for the operation of the agency.

17 Sec. 21. The commissioner may conduct an examination or
18 investigation of a licensee or any of its authorized delegates.
19 Except as provided in section 26, the commissioner and the agency
20 shall not disclose information obtained in an examination or
21 investigation.

22 Sec. 22. (1) The commissioner may conduct an on-site
23 examination or investigation of records maintained under section
24 25, including a joint examination or investigation conducted with
25 representatives of other departments or agencies of this state, 1
26 or more agencies of another state, or of the federal government.

27 (2) The commissioner may accept an examination or

1 investigation report of a department or agency of this state or of
2 another state or of the federal government or a report prepared by
3 a certified public accountant instead of conducting an examination
4 or investigation.

5 (3) A joint examination or investigation or an acceptance of
6 an examination or investigation report under this section does not
7 preclude the commissioner from conducting his or her own
8 examination or investigation.

9 (4) The report of a joint investigation or an examination
10 report accepted by the commissioner under this section is an
11 official report of the commissioner for all purposes.

12 Sec. 23. (1) If there is a change in any information provided
13 in a licensee's initial or renewal application, the licensee shall
14 file the changed information with the commissioner before the
15 change occurs, unless the commissioner prescribes a different
16 deadline for filing the changed information that is not later than
17 5 business days after the change occurs. The commissioner shall
18 consider whether it is feasible for the licensee to file the
19 changed information before the change occurs in prescribing a
20 different deadline.

21 (2) A licensee that submits a renewal application to the
22 commissioner shall include with the application a current list of
23 the names and street addresses of each authorized delegate and
24 location in this state where the licensee or authorized delegates
25 of the licensee provide money transmission services.

26 (3) A licensee shall file a report with the agency within 3
27 business days after the licensee has reason to know of the

1 occurrence of any of the following events:

2 (a) The filing of a petition by or against the licensee under
3 the bankruptcy code, 11 USC 101 to 1330, for bankruptcy or
4 reorganization.

5 (b) The filing of a petition by or against the licensee for
6 receivership, the commencement of any other judicial or
7 administrative proceeding for the licensee's dissolution or
8 reorganization, or the making of a general assignment for the
9 benefit of its creditors.

10 (c) The commencement of a proceeding to revoke or suspend a
11 license of the licensee in this state, another state, or a country
12 in which the licensee engages in business or is licensed.

13 (d) A charge or conviction of the licensee or of an executive
14 officer, manager, director, or control person of the licensee for a
15 felony.

16 (e) A charge or conviction of an authorized delegate for a
17 felony.

18 Sec. 24. (1) If there is a proposed change of control of a
19 licensee, the licensee shall do all of the following:

20 (a) Give the commissioner written notice of a proposed change
21 of control 30 days or more before the proposed change of control.

22 (b) Request approval of the proposed change of control.

23 (c) Pay a nonrefundable fee with the notice, in an amount
24 prescribed by the commissioner.

25 (2) After review of a request for approval under subsection
26 (1), the commissioner may require the licensee to provide
27 additional information concerning each proposed control person of

1 the licensee. However, the commissioner shall only require that the
2 licensee provide additional information of the same type required
3 of the licensee or any control person of the licensee as part of
4 the licensee's original license or renewal application.

5 (3) The commissioner shall approve a request for change of
6 control under subsection (1) if, after investigation, the
7 commissioner determines that the person or group of persons
8 requesting approval has the experience, character, and general
9 fitness to operate the licensee in a lawful and proper manner.

10 (4) Subsection (1) does not apply to a public offering of
11 securities.

12 Sec. 25. (1) A licensee or any person subject to this act
13 shall maintain all of the following records for at least 3 years:

14 (a) A record of each payment instrument from the date it was
15 created.

16 (b) A general ledger posted at least monthly containing all
17 asset, liability, capital, income, and expense accounts.

18 (c) Bank statements and bank reconciliation records.

19 (d) Records of outstanding payment instruments.

20 (e) Records of each payment instrument paid within the 3-year
21 period.

22 (f) A list of the last known names and addresses of all of the
23 licensee's authorized delegates.

24 (g) Any other records the commissioner reasonably requires.

25 (2) The records described in subsection (1) may be stored on
26 any tangible medium or in any electronic or other medium that is
27 immediately retrievable in perceivable form.

1 (3) A licensee or other person may maintain the records
2 described in subsection (1) outside of this state if they are made
3 accessible to the commissioner.

4 Sec. 26. (1) The commissioner, each former commissioner, and
5 each current and former deputy, agent, and employee of the agency
6 shall keep secret all facts and information obtained in the course
7 of their duties, unless that person is required under law to report
8 on, take official action concerning, or testify in any proceedings
9 regarding a licensee or the activities of a licensee.

10 (2) This section does not apply to, and does not prohibit the
11 furnishing of information or documents to, any federal, foreign, or
12 out-of-state regulatory agency with jurisdiction over a licensee
13 and is not applicable to any disclosure made in the public interest
14 by the commissioner, at his or her discretion.

15 Sec. 31. (1) A licensee shall maintain at all times
16 permissible investments that have a market value computed in
17 accordance with generally accepted accounting principles of not
18 less than the aggregate amount of all of its outstanding payment
19 instruments issued or sold and money transmitted by the licensee.

20 (2) The commissioner may limit the extent to which a type of
21 investment within a class of permissible investments is considered
22 a permissible investment by any licensee, except for money and
23 certificates of deposit issued by a depository financial
24 institution. The commissioner by order or declaratory ruling may
25 allow other types of investments that the commissioner determines
26 to have a safety substantially equivalent to other permissible
27 investments.

1 (3) Even if commingled with other assets of a licensee,
2 permissible investments are held in trust for the benefit of the
3 purchasers and holders of the licensee's outstanding payment
4 instruments in the event of bankruptcy or receivership of the
5 licensee.

6 (4) As used in this section, "permissible investments" means
7 the investments described in section 32 or allowed by the
8 commissioner under subsection (2).

9 Sec. 32. (1) Except to the extent otherwise limited by the
10 commissioner under section 31(2), each of the following investments
11 is permissible under section 31:

12 (a) Cash, a certificate of deposit, or a senior debt
13 obligation of a federally insured depository financial institution.

14 (b) A banker's acceptance or bill of exchange that is eligible
15 for purchase upon endorsement by a member bank of the federal
16 reserve system and is eligible for purchase by a federal reserve
17 bank.

18 (c) An investment bearing a rating of 1 of the 3 highest
19 grades as defined by a nationally recognized organization that
20 rates securities.

21 (d) An investment security that is an obligation of the United
22 States or a department, agency, or instrumentality of the United
23 States; an investment in an obligation that is guaranteed fully as
24 to principal and interest by the United States; or an investment in
25 an obligation of a state or a governmental subdivision, agency, or
26 instrumentality of a state.

27 (e) A receivable that is payable to a licensee from its

1 authorized delegate, in the ordinary course of business, pursuant
2 to contracts that are not past due or doubtful of collection, if
3 the aggregate amount of receivables under this subdivision does not
4 exceed 20% of the total permissible investments of a licensee and
5 the licensee does not hold at 1 time receivables under this
6 subdivision in any 1 person aggregating more than 10% of the
7 licensee's total permissible investments.

8 (f) A share or a certificate issued by an open-end management
9 investment company that is registered with the United States
10 securities and exchange commission under the investment company act
11 of 1940, 15 USC 80a-1 to 80a-64, and whose portfolio is restricted
12 by the management company's investment policy to investments
13 specified in subdivisions (a) to (d).

14 (2) Subject to subsection (3), the following investments are
15 permissible under section 31, but only to the extent specified:

16 (a) An interest-bearing bill, note, bond, or debenture of a
17 person whose equity shares are traded on a national securities
18 exchange or on a national over-the-counter market, if the aggregate
19 of investments under this subdivision does not exceed 20% of the
20 total permissible investments of a licensee and the licensee does
21 not at 1 time hold investments under this subdivision in any 1
22 person aggregating more than 10% of the licensee's total
23 permissible investments.

24 (b) A share of a person traded on a national securities
25 exchange or a national over-the-counter market or a share or a
26 certificate issued by an open-end management investment company
27 that is registered with the United States securities and exchange

1 commission under the investment company act of 1940, 15 USC 80a-1
2 to 80a-64, and whose portfolio is restricted by the management
3 company's investment policy to shares of a person traded on a
4 national securities exchange or a national over-the-counter market,
5 if the aggregate of investments under this subdivision does not
6 exceed 20% of the total permissible investments of a licensee and
7 the licensee does not at 1 time hold investments in any 1 person
8 aggregating more than 10% of the licensee's total permissible
9 investments.

10 (c) A demand-borrowing agreement made to a corporation or a
11 subsidiary of a corporation whose securities are traded on a
12 national securities exchange, if the aggregate of the amount of
13 principal and interest outstanding under demand-borrowing
14 agreements under this subdivision does not exceed 20% of the total
15 permissible investments of a licensee and the licensee does not at
16 1 time hold principal and interest outstanding under demand-
17 borrowing agreements under this subdivision with any 1 person
18 aggregating more than 10% of the licensee's total permissible
19 investments.

20 (d) Any other investment the commissioner designates by order
21 or declaratory ruling, to the extent specified by the commissioner.

22 (3) The aggregate of investments under subsection (2) may not
23 exceed 50% of the total permissible investments of a licensee
24 calculated under section 31.

25 Sec. 33. (1) An agreement between a licensee and an authorized
26 delegate shall be in writing and require the authorized delegate to
27 operate in compliance with this act and other applicable law. The

1 licensee shall furnish in writing to each authorized delegate
2 policies and procedures sufficient for compliance with this act and
3 other applicable law.

4 (2) An authorized delegate shall remit all money owing to the
5 licensee in accordance with the terms of the agreement between the
6 licensee and the authorized delegate.

7 (3) If a license is suspended or revoked, the commissioner
8 shall notify the licensee and order the licensee to send a notice
9 to its authorized delegates directing them to cease providing money
10 transmission services on behalf of the licensee, and the authorized
11 delegate shall immediately cease providing money transmission
12 services as an authorized delegate of the licensee.

13 (4) An authorized delegate shall not provide money
14 transmission services outside the scope of activity permissible
15 under the agreement between the authorized delegate and the
16 licensee, except activity in which the authorized delegate is
17 otherwise authorized to engage. An authorized delegate of a
18 licensee holds all money received from providing money transmission
19 services, reduced by any fees owed to the authorized delegate by
20 the licensee, in escrow for the benefit of the licensee.

21 (5) As used in this section, "remit" means to make direct
22 payments of money to a licensee or its representative authorized to
23 receive money or to deposit money in a depository financial
24 institution in an account specified by the licensee.

25 Sec. 34. (1) An authorized delegate shall not make any
26 fraudulent or false statement or misrepresentation to a customer or
27 licensee or to the commissioner.

1 (2) An authorized delegate shall perform money transmission
2 services lawfully and in accordance with the licensee's operating
3 policies and procedures provided to the authorized delegate.

4 (3) All funds received by an authorized delegate from the sale
5 of a payment instrument, less fees, shall be held in trust for the
6 licensee from the time the funds are received by the authorized
7 delegate until the time the funds are remitted to the licensee.

8 (4) If an authorized delegate commingles any of the funds
9 received with any other funds or property owned or controlled by
10 the authorized delegate, all commingled funds and other property
11 are impressed with a trust for the licensee in an amount equal to
12 the amount of the funds due the licensee.

13 (5) An authorized delegate shall report to the licensee the
14 theft or loss of a payment instrument within 24 hours after the
15 theft or loss.

16 Sec. 41. (1) The commissioner may deny, suspend, not renew, or
17 revoke a license, place a licensee in receivership, or order a
18 licensee to revoke the designation of an authorized delegate if any
19 of the following occur:

20 (a) The licensee violates this act, a rule promulgated under
21 this act, an order or declaratory ruling issued under this act, or
22 any applicable state or federal law.

23 (b) The licensee does not grant access to its books and
24 records during the course of an examination or investigation by the
25 commissioner.

26 (c) The licensee engages in fraud, intentional
27 misrepresentation, or gross negligence.

1 (d) An authorized delegate of the licensee is convicted of a
2 violation of a state or federal anti-money-laundering statute or
3 violates a rule promulgated or an order or ruling issued under this
4 act, as a result of the licensee's knowing or willful misconduct.

5 (e) The experience, character, or general fitness of the
6 licensee, authorized delegate, or control person indicates that it
7 is not in the public interest to permit the person to provide money
8 transmission services.

9 (f) Subject to subsection (2), the licensee engages in an
10 unsafe or unsound practice.

11 (g) The licensee fails to maintain the minimum net worth
12 required under section 13(1) or is insolvent, suspends payment of
13 its obligations, or makes a general assignment for the benefit of
14 its creditors.

15 (h) The licensee does not remove an authorized delegate after
16 the commissioner issues and serves upon the licensee an order that
17 includes a finding that the authorized delegate has violated this
18 act.

19 (2) In determining whether a licensee is engaging in an unsafe
20 or unsound practice, the commissioner may consider the size and
21 condition of the licensee's money transmission services business,
22 the magnitude of the loss, the gravity of the violation of this
23 act, the previous conduct of the person involved, and other factors
24 the commissioner considers relevant.

25 Sec. 42. (1) A person that intentionally makes a false
26 statement, misrepresentation, or false certification in any record
27 or document filed or required to be maintained under this act or

1 that intentionally makes a false entry or omits a material entry in
2 a record is guilty of a felony punishable by imprisonment for not
3 more than 5 years or a fine of not more than \$100,000.00, or both.

4 (2) A person that engages in criminal fraud in the conduct of
5 its money transmission services business is guilty of a felony
6 punishable by imprisonment for not more than 5 years or a fine of
7 not more than \$100,000.00, or both.

8 (3) A person that knowingly engages in an activity for which a
9 license is required under this act and is not licensed under this
10 act is guilty of a felony punishable by imprisonment for not more
11 than 5 years or a fine of not more than \$100,000.00, or both. A
12 court shall order a person convicted of violating subsection (1) or
13 (2) to pay restitution as provided in section 1a of chapter IX of
14 the code of criminal procedure, 1927 PA 175, MCL 769.1a, and the
15 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

16 Sec. 43. (1) After conducting an investigation or examination,
17 the commissioner may issue an order summarily suspending a license
18 under section 92 of the administrative procedures act of 1969, 1969
19 PA 306, MCL 24.292, based on an affidavit by a person familiar with
20 the facts set forth in the affidavit stating that, on information
21 and belief, an imminent threat of financial loss or imminent threat
22 to the public welfare exists.

23 (2) If the commissioner issues a summary suspension order
24 under section 92 of the administrative procedures act of 1969, 1969
25 PA 306, MCL 24.292, an administrative law hearings examiner shall
26 grant a request to dissolve a summary suspension order unless the
27 examiner finds that an imminent threat of financial loss or

1 imminent threat to the public welfare exists that requires an
2 emergency action and continuation of the summary suspension order.

3 (3) The record created at a hearing on a summary suspension is
4 part of the record of the complaint at any subsequent hearing in a
5 contested case.

6 Sec. 44. (1) If in the opinion of the commissioner a licensee
7 is, has, or is about to engage in a practice that poses a threat of
8 financial loss or threat to the public welfare or is, has, or is
9 about to violate a law, rule, or order, the commissioner may issue
10 and serve on the licensee a cease and desist order under this
11 section.

12 (2) A cease and desist order issued under this section shall
13 contain a statement of the facts constituting the alleged practice
14 or violation and shall fix a time and place for a hearing to
15 determine if the commissioner should issue an order to cease and
16 desist against the licensee.

17 (3) A licensee may consent to issuance of a cease and desist
18 order under this section. A licensee also consents to the issuance
19 of the cease and desist order if the licensee or a duly authorized
20 representative of the licensee fails to appear at a hearing
21 described in subsection (2).

22 (4) If a licensee consents under subsection (3), or if the
23 commissioner finds based on the record made at the hearing that the
24 practice or violation specified in the order is established, the
25 cease and desist order becomes final. The order may require the
26 licensee and its officers, directors, members, partners, trustees,
27 employees, agents, or control persons to cease and desist from the

1 practice or violation and to take affirmative action to correct the
2 conditions resulting from the practice or violation.

3 (5) Except as provided in subsection (6) or to the extent it
4 is stayed, modified, terminated, or set aside by the commissioner
5 or a court, a cease and desist order is effective on the date of
6 service.

7 (6) A cease and desist order issued with a licensee's consent
8 is effective at the time specified in the order and remains
9 effective and enforceable as provided in the order.

10 Sec. 45. The commissioner may promulgate rules under the
11 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
12 24.328, that he or she considers necessary to implement and enforce
13 this act.

14 Sec. 46. The commissioner may assess a civil fine against a
15 person that violates this act, a rule promulgated or an order or
16 ruling issued by the commissioner under this act, or any other
17 applicable state or federal law in an amount that does not exceed
18 \$10,000.00 per day for each day the violation continues, plus this
19 state's costs and expenses for the investigation and prosecution of
20 the matter, including reasonable attorney fees.

21 Sec. 47. (1) If in the opinion of the commissioner a person
22 has engaged in fraud or has been convicted of a criminal violation
23 involving money laundering, the commissioner may serve upon that
24 person a written notice of intention to prohibit that person from
25 being employed by, an agent of, or a control person of a licensee
26 under this act, or a licensee or registrant under a financial
27 licensing act. As used in this subsection, "fraud" includes

1 actionable fraud, actual or constructive fraud, criminal fraud,
2 extrinsic or intrinsic fraud, fraud in the execution, in the
3 inducement, in fact, or in law, or any other form of fraud.

4 (2) A notice issued under subsection (1) shall contain a
5 statement of the facts supporting the prohibition and, except as
6 provided under subsection (7), set a time and date for a hearing,
7 within 60 days after the date of the notice. If the person does not
8 appear at the hearing, he or she consents to the issuance of an
9 order in accordance with the notice.

10 (3) If, after a hearing held under subsection (2), the
11 commissioner finds that any of the grounds specified in the notice
12 have been established, the commissioner may issue an order of
13 suspension or prohibition from being a licensee or registrant or
14 from being employed by, an agent of, or a control person of any
15 licensee under this act or a licensee or registrant under any
16 financial licensing act.

17 (4) An order issued under subsection (2) or (3) is effective
18 when served on the person subject to the order. The commissioner
19 shall also serve a copy of the order upon the licensee of which the
20 person is an employee, agent, or control person. The order remains
21 in effect until it is stayed, modified, terminated, or set aside by
22 the commissioner or a reviewing court.

23 (5) After 5 years from the date of an order issued under
24 subsection (2) or (3), the person subject to the order may apply to
25 the commissioner to terminate the order.

26 (6) If the commissioner considers that a person served a
27 notice under subsection (1) poses an imminent threat of financial

1 loss to purchasers of payment instruments from a licensee, the
2 commissioner may serve upon the person an order of suspension from
3 being employed by, an agent of, or a control person of any
4 licensee. The suspension is effective on the date the order is
5 issued and, unless stayed by a court, remains in effect pending the
6 completion of a review as provided under this section and until the
7 commissioner has dismissed the charges specified in the order.

8 (7) Unless otherwise agreed to by the commissioner and the
9 person served with an order issued under subsection (6), the
10 commissioner shall hold the hearing required under subsection (2)
11 to review a suspension not earlier than 5 days or later than 20
12 days after the date of the notice.

13 (8) If a person is convicted of a felony involving fraud,
14 dishonesty, breach of trust, or money laundering, the commissioner
15 may issue an order suspending or prohibiting that person from being
16 a licensee and from being employed by, an agent of, or a control
17 person of any licensee under this act or a licensee or registrant
18 under a financial licensing act. After 5 years from the date of the
19 order, the person subject to the order may apply to the
20 commissioner to terminate the order.

21 (9) The commissioner shall mail a copy of any notice or order
22 issued under this section to the licensee of which the person
23 subject to the notice or order is an employee, agent, or control
24 person.

25 Enacting section 1. The sale of checks act, 1960 PA 136, MCL
26 487.901 to 487.916, is repealed.