

SENATE BILL No. 1393

September 15, 2004, Introduced by Senators SCOTT, BRATER, OLSHOVE, JACOBS, CLARKE, BASHAM, SCHAUER, LELAND, CHERRY, EMERSON, PRUSI and BARCIA and referred to the Committee on Banking and Financial Institutions.

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
2 "money 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
7 a license under this act.

8 (c) "Authorized delegate" means a person that a licensee
9 designates to provide money transmission services in this state

1 on behalf of the licensee.

2 (d) "Commissioner" means the commissioner of the office of
3 financial and insurance services.

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

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

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

13 (iii) The power to exercise directly or indirectly a
14 controlling influence over the management or policies of a
15 licensee or person 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
18 to participate in the direction, directly or indirectly through 1
19 or more other natural persons, of the management or policies of a
20 licensee.

21 (g) "Depository financial institution" means a bank,
22 national bank, savings and loan association, savings bank, or
23 credit union organized under the laws of this state, another
24 state, the District of Columbia, the United States, or a
25 territory or protectorate of the United States whose deposits are
26 insured by an agency of the 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 services 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
13 to generally accepted accounting principles, is significant to an
14 applicant's or a licensee's financial health and must be
15 disclosed in the applicant's or licensee's audited financial
16 statements, 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
21 monetary unit of account established by an intergovernmental
22 organization or by agreement between 2 or more governments.

23 (c) "Money transmission services" means any of the
24 following:

25 (i) Selling or issuing payment instruments for a fee,
26 commission, or other consideration.

27 (ii) Receiving money in an amount of at least \$3,000.00 in

1 any period of 7 consecutive calendar days for transmission or
2 transmitting money within the United States or to locations
3 abroad by any means, including, but not limited to, payment
4 instrument, wire transfer, electronic transfer, stored value
5 device, facsimile, or otherwise, for a fee, commission, or other
6 consideration.

7 (d) "Outstanding payment instrument" means any check, draft,
8 money order, travelers check, other written instrument,
9 electronic or wire transfer, stored value device, or facsimile
10 issued by a licensee that has been sold in the United States
11 directly by the licensee or any payment instrument issued by the
12 licensee that has been sold by an agency, office, or
13 representative of the licensee in the United States, that has
14 been reported to the licensee as having been sold, and that has
15 not yet been paid by or for the licensee.

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

24 (f) "Person" means an individual, partnership, association,
25 corporation, limited liability company, trust, estate, joint
26 venture, government, governmental subdivision, agency or
27 instrumentality, public corporation, or any other legal entity.

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

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

7 (i) "Stored value device" means a card or other tangible
8 object used for the transmission or payment of money that
9 contains a microprocessor chip, magnetic stripe, or other means
10 for the storage of information; that is prefunded; and the value
11 of which is reduced after each use. The term does not include a
12 tangible object the value of which is redeemable in the issuer's
13 goods and services.

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

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

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

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

22 (a) The United States or a department, agency, or
23 instrumentality of the United States.

24 (b) Money transmission services provided by the United
25 States postal service or by a contractor on behalf of the United
26 States postal service.

27 (c) A state, county, city, or any other governmental

1 subdivision of a state.

2 (d) A depository financial institution, bank holding
3 company, office of an international banking corporation, or
4 branch of a foreign bank; a bank service company organized under
5 the bank service company act, 12 USC 1861 to 1867; or a
6 corporation organized under the Edge act, 12 USC 611 to 633.

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

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

17 (g) A registered futures commission merchant under the
18 federal commodities laws, to the extent of its operation as a
19 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, or settlement services between or
26 among persons excluded by this section in connection with wire
27 transfers, credit card transactions, debit card transactions,

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

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

6 Sec. 11. (1) Except as otherwise provided in this section
7 and subject to section 4, a person shall not provide money
8 transmission services in this state on or after the effective
9 date of this act without a license under this act.

10 (2) A person licensed under the sale of checks act, 1969 PA
11 136, MCL 487.901 to 487.916, on the effective date of this act
12 may continue to provide money transmission services under that
13 license until December 31, 2005 if the person meets all of the
14 following:

15 (a) The person files an application for a license under
16 section 12 within 90 days after the effective date of this act.

17 (b) The person meets the requirements of sections 12, 13, 14,
18 and 15 in conducting its money transmission business before
19 January 1, 2006.

20 (c) The person only provides money transmission services
21 authorized under the sale of checks act, 1969 PA 136, MCL 487.901
22 to 487.916.

23 (3) A person described in subsection (2) shall not provide
24 money transmission services after December 31, 2005 without a
25 license under this act.

26 (4) A license under this act is not required for a person to
27 act as an authorized delegate of a person licensed under this

1 act.

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

6 (a) The legal name and residential and business addresses of
7 the applicant and any assumed or trade name used by the applicant
8 in conducting its business.

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

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

15 (d) A list of the applicant's proposed authorized delegates
16 and the locations in this state where the applicant and its
17 authorized delegates propose to engage in providing money
18 transmission services.

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

23 (f) Information concerning any bankruptcy or receivership
24 proceedings affecting the applicant.

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

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

3 (i) Any other information the commissioner reasonably
4 requires with respect to the applicant.

5 (2) If an applicant is not a natural person, the applicant
6 shall also provide all of the following information with the
7 application:

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

10 (b) A brief description of the structure or organization of
11 the applicant, including any parent or subsidiary of the
12 applicant, and whether the applicant or a parent or subsidiary of
13 the applicant is publicly traded.

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

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

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

24 (f) If the applicant is publicly traded, a copy of the most
25 recent report filed with the securities and exchange commission
26 under section 13 of the federal securities exchange act of 1934,
27 15 USC 78m.

1 (g) If the applicant is a wholly owned subsidiary of a
2 corporation publicly traded in the United States, a copy of
3 financial statements for the parent corporation for the most
4 recent fiscal year or a copy of the parent corporation's most
5 recent report filed under section 13 of the federal securities
6 exchange act of 1934, 15 USC 78m.

7 (h) If the applicant is a wholly owned subsidiary of a
8 corporation publicly traded outside the United States, a copy of
9 any documentation similar to that described in subdivision (g)
10 that is filed with the regulator of the parent corporation's
11 domicile outside the United States.

12 (i) If the applicant has a registered agent in this state,
13 the name and address of that registered agent.

14 (j) Any other information the commissioner reasonably
15 requires with respect to the applicant.

16 Sec. 13. (1) At the time of filing an application for a
17 license under this act, an applicant shall provide the
18 commissioner with copies of the applicant's financial statements
19 for the most recent fiscal year and, if available, for the 2-year
20 period preceding the submission of the application. The
21 financial statements shall meet all of the following:

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

24 (b) If the applicant intends to engage in providing money
25 transmission services in this state at more than 1 location or
26 through authorized delegates, show that the applicant has a net
27 worth that equals or exceeds either the sum of \$100,000.00 plus

1 an additional \$25,000.00 for each location or authorized
2 delegate, as applicable, or \$1,000,000.00, whichever is less.

3 (c) Are in the form prescribed by the commissioner, except
4 that financial statements prepared by or reviewed by an
5 independent certified public accountant may be in the form
6 prescribed by that accountant.

7 (d) Are prepared in accordance with generally accepted
8 accounting principles.

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

12 (3) At the time of the filing of an application and at all
13 times after a license is issued, an applicant shall be registered
14 or qualified to do business in this state.

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

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

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

24 (b) Is in a principal amount of \$1,500,000.00.

25 (c) Is in a form satisfactory to the commissioner, is payable
26 to the commissioner for the benefit of any individuals who are
27 Michigan residents and who are creditors or claimants of the

1 applicant and its authorized delegates through purchase of a
2 payment instrument from the applicant or an authorized delegate
3 located in this state, and secures the faithful performance of
4 the obligations of the applicant and its authorized delegates
5 with respect to the receipt of money in connection with the
6 conduct of its money transmission services business.

7 (6) The aggregate liability of a surety under a bond issued
8 for purposes of subsection (5) shall not exceed the principal
9 amount of the bond.

10 Sec. 14. (1) When the commissioner receives a completed
11 application for a license under this act, the commissioner shall
12 investigate the financial condition and responsibility, financial
13 and business experience, character, and general fitness of the
14 applicant and each shareholder, if any, and control person of the
15 applicant. The commissioner may conduct an on-site investigation
16 of the applicant.

17 (2) When the commissioner determines that an application for
18 a license under this act is complete, the commissioner shall
19 promptly notify the applicant in writing of the date on which he
20 or she determined that the application was complete and shall
21 approve or deny the application within 120 days after that date.
22 Subject to subsection (5), if the commissioner does not approve
23 or deny an application within that 120-day period, the
24 commissioner shall issue the license.

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

1 (a) That the applicant has complied with sections 12, 13, and
2 16.

3 (b) That the financial condition and responsibility,
4 financial and business experience, character, and general fitness
5 of the applicant and the experience, character, and general
6 fitness of each control person and any shareholders of the
7 applicant meet the requirements of this act.

8 (c) That it is in the interest of the public to permit the
9 applicant to engage in providing money transmission services in
10 this state.

11 (d) That the applicant has paid the license fee under
12 subsection (4).

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

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

19 (6) An applicant whose application is denied by the
20 commissioner under this act may appeal within 30 days after the
21 date of the notice of the denial and request a hearing on the
22 denial.

23 Sec. 15. (1) By December 31 of each year, the commissioner
24 shall establish a schedule of fees to be paid by applicants and
25 licensees during the next calendar year. In establishing license
26 fees, the commissioner shall consider each licensee's business
27 volume and number of locations and any other business factors he

1 or she considers reasonable in order to generate funds sufficient
2 to pay, but not to exceed, the office's reasonably anticipated
3 costs of administering this act.

4 (2) A license issued under this act expires on December 31 of
5 each year unless earlier suspended, surrendered, or revoked under
6 this act. A licensee may renew a license by filing an
7 application for a license renewal, in the form and medium
8 prescribed by the commissioner, and paying the license fee for
9 the renewal year, on or before the December 1 preceding the
10 renewal year. The commissioner shall not renew a license if the
11 license fee for the renewal term is not paid.

12 Sec. 16. (1) In addition to any fees established by the
13 commissioner, a licensee shall pay the actual travel, lodging,
14 and meal expenses incurred by any agency employee who travels
15 outside of this state to examine the records of the licensee or
16 investigate the licensee.

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

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

25 Sec. 21. The commissioner may conduct an examination or
26 investigation of a licensee or any of its authorized delegates.
27 Except as provided in section 27, the commissioner and the agency

1 shall not disclose information obtained in an examination or
2 investigation.

3 Sec. 22. (1) The commissioner may conduct an on-site
4 examination or investigation of records maintained under section
5 25, including a joint examination or investigation conducted with
6 representatives of other departments or agencies of this state, 1
7 or more agencies of another state, or of the federal government.

8 (2) The commissioner may accept an examination or
9 investigation report of a department or agency of this state or
10 of another state or of the federal government or a report
11 prepared by a certified public accountant instead of conducting
12 an examination or investigation.

13 (3) A joint examination or investigation or an acceptance of
14 an examination or investigation report under this section does
15 not preclude the commissioner from conducting his or her own
16 examination or investigation.

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

20 Sec. 23. (1) If there is a change in any information
21 provided in a licensee's initial or renewal application, the
22 licensee shall file the changed information with the commissioner
23 before the change occurs, as prescribed by the commissioner.

24 (2) A licensee shall file with the commissioner within 45
25 days after the end of each fiscal quarter a current list of each
26 authorized delegate, control person, and location in this state
27 where the licensee or an authorized delegate of the licensee

1 provides money transmission services. The licensee shall include
2 the name and street address of each location and authorized
3 delegate in the filing.

4 (3) A licensee shall file a report with the agency within 1
5 business day after the licensee has reason to know of the
6 occurrence of any of the following events:

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

10 (b) The filing of a petition by or against the licensee for
11 receivership, the commencement of any other judicial or
12 administrative proceeding for the licensee's dissolution or
13 reorganization, or the making of a general assignment for the
14 benefit of its creditors.

15 (c) The commencement of a proceeding to revoke or suspend a
16 license of the licensee in this state, another state, or a
17 country in which the licensee engages in business or is
18 licensed.

19 (d) A charge or conviction of the licensee or of an executive
20 officer, manager, director, or control person of the licensee for
21 a felony.

22 (e) A charge or conviction of an authorized delegate for a
23 felony.

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

26 (a) Give the commissioner written notice of a proposed change
27 of control 30 days or more before the proposed change of

1 control.

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

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

5 (2) After review of a request for approval under subsection
6 (1), the commissioner may require the licensee to provide
7 additional information concerning each proposed control person of
8 the licensee. However, the commissioner shall only require that
9 the licensee provide additional information of the same type
10 required of the licensee or any control person of the licensee as
11 part of the licensee's original license or renewal application.

12 (3) The commissioner shall approve a request for change of
13 control under subsection (1) if, after investigation, the
14 commissioner determines that the person or group of persons
15 requesting approval has the experience, character, and general
16 fitness to operate the licensee in a lawful and proper manner and
17 that the public interest will not be jeopardized by the change of
18 control.

19 (4) Subsection (1) does not apply to a public offering of
20 securities.

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

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

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

1 (c) Bank statements and bank reconciliation records.

2 (d) Records of outstanding payment instruments.

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

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

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

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

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

14 Sec. 26. (1) If a licensee or authorized delegate files a
15 suspicious activity report with an agency of the federal
16 government, the licensee or authorized delegate shall also,
17 within 24 hours, file a copy of the suspicious activity report
18 with the department of state police.

19 (2) A licensee or authorized delegate may file the
20 suspicious activity report with the department of state police
21 under subsection (1) in any manner allowed by federal law or
22 regulation or in any other manner acceptable to the department of
23 state police.

24 (3) Except for a violation of 31 USC 5318(g), a licensee or
25 authorized delegate or a director, officer, employee, or agent of
26 the licensee or authorized delegate is not liable in any civil or
27 governmental action for filing a copy of a suspicious activity

1 report under this section or failing to notify a customer or any
2 other person of the filing.

3 Sec. 27. (1) The commissioner, each former commissioner,
4 and each current and former deputy, agent, and employee of the
5 agency shall keep secret all facts and information obtained in
6 the course of their duties, unless that person is required under
7 law to report on, take official action concerning, or testify in
8 any proceedings regarding a licensee or the activities of a
9 licensee.

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

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

1 permissible investments.

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

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

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

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

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

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

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

1 subdivision, agency, or instrumentality of a state.

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

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

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

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

26 (b) A share of a person traded on a national securities
27 exchange or a national over-the-counter market or a share or a

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

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

22 (d) Any other investment the commissioner designates by
23 order or declaratory ruling, to the extent specified by the
24 commissioner.

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

1 Sec. 33. (1) An agreement between a licensee and an
2 authorized delegate shall be in writing and require the
3 authorized delegate to operate in compliance with this act and
4 other applicable law. The licensee shall furnish in writing to
5 each authorized delegate policies and procedures sufficient for
6 compliance with this act and other applicable law.

7 (2) An authorized delegate shall remit all money owing to
8 the licensee in accordance with the terms of the agreement
9 between the licensee and the authorized delegate.

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

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

25 (5) As used in this section, "remit" means to make direct
26 payments of money to a licensee or its representative authorized
27 to receive money or to deposit money in a depository financial

1 institution in an account specified by the licensee.

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

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

8 (3) All funds received by an authorized delegate from the
9 sale of a payment instrument, less fees, shall be held in escrow
10 for the licensee from the time the funds are received by the
11 authorized delegate until the time the funds are remitted to the
12 licensee.

13 (4) If an authorized delegate commingles any of the funds
14 received with any other funds or property owned or controlled by
15 the authorized delegate, all commingled funds and other property
16 are held in escrow for the licensee in an amount equal to the
17 amount of the funds due the licensee.

18 (5) An authorized delegate shall report to the licensee the
19 theft or loss of a payment instrument within 24 hours after the
20 theft or loss.

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

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

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

4 (c) The licensee engages in fraud, intentional
5 misrepresentation, or gross negligence.

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

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

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

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

21 (h) The licensee does not remove an authorized delegate
22 after the commissioner issues and serves upon the licensee an
23 order that includes a finding that the authorized delegate has
24 violated this act.

25 (2) In determining whether a licensee is engaging in an
26 unsafe or unsound practice, the commissioner may consider the
27 size and condition of the licensee's money transmission services

1 business, the magnitude of the loss, the gravity of the violation
2 of this act, the previous conduct of the person involved, and
3 other factors the commissioner considers relevant.

4 Sec. 42. (1) A person that intentionally makes a false
5 statement, misrepresentation, or false certification in any
6 record or document filed or required to be maintained under this
7 act or that intentionally makes a false entry or omits a material
8 entry in a record is guilty of a felony punishable by
9 imprisonment for not more than 5 years or a fine of not more than
10 \$100,000.00, or both.

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

15 (3) A person that knowingly engages in an activity for which
16 a license is required under this act, is not licensed under this
17 act, and receives more than \$500.00 in compensation within a
18 30-day period from that activity is guilty of a misdemeanor
19 punishable by imprisonment for not more than 93 days or a fine of
20 not more than \$500.00, or both. A court shall order a person
21 convicted of violating subsection (1) or (2) to pay restitution
22 as provided in section 1a of chapter IX of the code of criminal
23 procedure, 1927 PA 175, MCL 769.1a, and the crime victim's rights
24 act, 1985 PA 87, MCL 780.751 to 780.834.

25 Sec. 43. (1) After conducting an investigation or
26 examination, the commissioner may issue an order summarily
27 suspending a license under section 92 of the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.292, based on an
2 affidavit by a person familiar with the facts set forth in the
3 affidavit stating that, on information and belief, an imminent
4 threat of financial loss or imminent threat to the public welfare
5 exists.

6 (2) If the commissioner issues a summary suspension order
7 under section 92 of the administrative procedures act of 1969,
8 1969 PA 306, MCL 24.292, an administrative law hearings examiner
9 shall grant a request to dissolve a summary suspension order
10 unless the examiner finds that an imminent threat of financial
11 loss or imminent threat to the public welfare exists that
12 requires an emergency action and continuation of the summary
13 suspension order.

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

17 Sec. 44. (1) If in the opinion of the commissioner a
18 licensee is, has, or is about to engage in a practice that poses
19 a threat of financial loss or threat to the public welfare or is,
20 has, or is about to violate a law, rule, or order, the
21 commissioner may issue and serve on the licensee a cease and
22 desist order under this section.

23 (2) A cease and desist order issued under this section shall
24 contain a statement of the facts constituting the alleged
25 practice or violation and shall fix a time and place for a
26 hearing to determine if the commissioner should issue an order to
27 cease and desist against the licensee.

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

6 (4) If a licensee consents under subsection (3), or if the
7 commissioner finds based on the record made at the hearing that
8 the practice or violation specified in the order is established,
9 the cease and desist order becomes final. The order may require
10 the licensee and its officers, directors, members, partners,
11 trustees, employees, agents, or control persons to cease and
12 desist from the practice or violation and to take affirmative
13 action to correct the conditions resulting from the practice or
14 violation.

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

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

22 Sec. 45. The commissioner may promulgate rules under the
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
24 24.328, that he or she considers necessary to implement and
25 enforce this act.

26 Sec. 46. The commissioner may assess a civil fine against a
27 person that violates this act, a rule promulgated or an order or

1 ruling issued by the commissioner under this act, or any other
2 applicable state or federal law in an amount that does not exceed
3 \$10,000.00 per day for each day the violation continues, plus
4 this state's costs and expenses for the investigation and
5 prosecution of the matter, including reasonable attorney fees.

6 Sec. 47. (1) If in the opinion of the commissioner a person
7 has engaged in fraud or has been convicted of a criminal
8 violation involving money laundering, the commissioner may serve
9 upon that person a written notice of intention to prohibit that
10 person from being employed by, an agent of, or a control person
11 of a licensee under this act, or a licensee or registrant under a
12 financial licensing act. As used in this subsection, "fraud"
13 includes actionable fraud, actual or constructive fraud, criminal
14 fraud, extrinsic or intrinsic fraud, fraud in the execution, in
15 the inducement, in fact, or in law, or any other form of fraud.

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

22 (3) If, after a hearing held under subsection (2), the
23 commissioner finds that any of the grounds specified in the
24 notice have been established, the commissioner may issue an order
25 of suspension or prohibition from being a licensee or registrant
26 or from being employed by, an agent of, or a control person of
27 any licensee under this act or a licensee or registrant under any

1 financial licensing act.

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

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

11 (6) If the commissioner considers that a person served a
12 notice under subsection (1) poses an imminent threat of financial
13 loss to purchasers of payment instruments from a licensee, the
14 commissioner may serve upon the person an order of suspension
15 from being employed by, an agent of, or a control person of any
16 licensee. The suspension is effective on the date the order is
17 issued and, unless stayed by a court, remains in effect pending
18 the completion of a review as provided under this section and
19 until the commissioner has dismissed the charges specified in the
20 order.

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

26 (8) If a person is convicted of a felony involving fraud,
27 dishonesty, breach of trust, or money laundering, the

1 commissioner may issue an order suspending or prohibiting that
2 person from being a licensee and from being employed by, an agent
3 of, or a control person of any licensee under this act or a
4 licensee or registrant under a financial licensing act. After 5
5 years from the date of the order, the person subject to the order
6 may apply to the commissioner to terminate the order.

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

11 Enacting section 1. The sale of checks act, 1969 PA 136,
12 MCL 487.901 to 487.916, is repealed effective January 1, 2006.

13 Enacting section 2. This act takes effect 90 days after the
14 date it is enacted.