

# SENATE BILL No. 176

February 9, 2005, Introduced by Senator SCOTT 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 "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 services acts, as that term is defined in section 2 of the consumer  
6 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 any of the following:

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

26 (ii) Receiving money in an amount of at least \$3,000.00 in any  
27 period of 7 consecutive calendar days for transmission or

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

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

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

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

26 (g) "Record" means information that is inscribed on a tangible  
27 medium or that is stored in an electronic or other medium and is

1 retrievable in perceivable form.

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

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

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

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

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

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

20 (a) The United States or a department, agency, or  
21 instrumentality of the United States.

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

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

27 (d) A depository financial institution, bank holding company,

1 office of an international banking corporation, or branch of a  
2 foreign bank; a bank service company organized under the bank  
3 service company act, 12 USC 1861 to 1867; or a corporation  
4 organized under the Edge act, 12 USC 611 to 633.

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

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

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

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

21 (i) An operator of a payment system, to the extent that it  
22 provides processing, clearing, or settlement services between or  
23 among persons excluded by this section in connection with wire  
24 transfers, credit card transactions, debit card transactions,  
25 stored value transactions, automated clearinghouse transfers, or  
26 similar funds transfers.

27 (j) A person registered as a securities broker-dealer under

1 federal or state securities laws, to the extent of its operation as  
2 a registered broker-dealer.

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

7       (2) A person licensed under the sale of checks act, 1960 PA  
8 136, MCL 487.901 to 487.916, on the effective date of this act may  
9 continue to provide money transmission services under that license  
10 until December 31, 2006 if the person meets all of the following:

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

13       (b) The person meets the requirements of sections 12, 13, 14,  
14 and 15 in conducting its money transmission business before January  
15 1, 2007.

16       (c) The person only provides money transmission services  
17 authorized under the sale of checks act, 1960 PA 136, MCL 487.901  
18 to 487.916.

19       (3) A person described in subsection (2) shall not provide  
20 money transmission services after December 31, 2006 without a  
21 license under this act.

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

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

1 (a) The legal name and residential and business addresses of  
2 the applicant and any assumed or trade name used by the applicant  
3 in conducting its business.

4 (b) A list of any criminal convictions of the applicant and  
5 any material litigation in which the applicant was involved in the  
6 10-year period preceding the submission of the application.

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

10 (d) A list of the applicant's proposed authorized delegates  
11 and the locations in this state where the applicant and its  
12 authorized delegates propose to engage in providing money  
13 transmission services.

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

18 (f) Information concerning any bankruptcy or receivership  
19 proceedings affecting the applicant.

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

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

25 (i) Any other information the commissioner reasonably requires  
26 with respect to the applicant.

27 (2) If an applicant is not a natural person, the applicant

1 shall also provide all of the following information with the  
2 application:

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

5 (b) A brief description of the structure or organization of  
6 the applicant, including any parent or subsidiary of the applicant,  
7 and whether the applicant or a parent or subsidiary of the  
8 applicant is publicly traded.

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

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

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

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

22 (g) If the applicant is a wholly owned subsidiary of a  
23 corporation publicly traded in the United States, a copy of  
24 financial statements for the parent corporation for the most recent  
25 fiscal year or a copy of the parent corporation's most recent  
26 report filed under section 13 of the federal securities exchange  
27 act of 1934, 15 USC 78m.

1 (h) If the applicant is a wholly owned subsidiary of a  
2 corporation publicly traded outside the United States, a copy of  
3 any documentation similar to that described in subdivision (g) that  
4 is filed with the regulator of the parent corporation's domicile  
5 outside the United States.

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

8 (j) Any other information the commissioner reasonably requires  
9 with respect to the applicant.

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

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

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

24 (c) Are in the form prescribed by the commissioner, except  
25 that financial statements prepared by or reviewed by an independent  
26 certified public accountant may be in the form prescribed by that  
27 accountant.

1 (d) Are prepared in accordance with generally accepted  
2 accounting principles.

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

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

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

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

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

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

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

1           (6) The aggregate liability of a surety under a bond issued  
2 for purposes of subsection (5) shall not exceed the principal  
3 amount of the bond.

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

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

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

21           (a) That the applicant has complied with sections 12, 13, and  
22 16.

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

1 (c) That it is in the interest of the public to permit the  
2 applicant to engage in providing money transmission services in  
3 this state.

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

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

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

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

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

24 (2) A license issued under this act expires on December 31 of  
25 each year unless earlier suspended, surrendered, or revoked under  
26 this act. A licensee may renew a license by filing an application  
27 for a license renewal, in the form and medium prescribed by the

1 commissioner, and paying the license fee for the renewal year, on  
2 or before the December 1 preceding the renewal year. The  
3 commissioner shall not renew a license if the license fee for the  
4 renewal term is not paid.

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

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 27, 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, as prescribed by the commissioner.

16 (2) A licensee shall file with the commissioner within 45 days  
17 after the end of each fiscal quarter a current list of each  
18 authorized delegate, control person, and location in this state  
19 where the licensee or an authorized delegate of the licensee  
20 provides money transmission services. The licensee shall include  
21 the name and street address of each location and authorized  
22 delegate in the filing.

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

26 (a) The filing of a petition by or against the licensee under  
27 the bankruptcy code, 11 USC 101 to 1330, for bankruptcy or

1 reorganization.

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

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

10 (d) A charge or conviction of the licensee or of an executive  
11 officer, manager, director, or control person of the licensee for a  
12 felony.

13 (e) A charge or conviction of an authorized delegate for a  
14 felony.

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

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

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

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

22 (2) After review of a request for approval under subsection  
23 (1), the commissioner may require the licensee to provide  
24 additional information concerning each proposed control person of  
25 the licensee. However, the commissioner shall only require that the  
26 licensee provide additional information of the same type required  
27 of the licensee or any control person of the licensee as part of

1 the licensee's original license or renewal application.

2 (3) The commissioner shall approve a request for change of  
3 control under subsection (1) if, after investigation, the  
4 commissioner determines that the person or group of persons  
5 requesting approval has the experience, character, and general  
6 fitness to operate the licensee in a lawful and proper manner and  
7 that the public interest will not be jeopardized by the change of  
8 control.

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

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

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

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

17 (c) Bank statements and bank reconciliation records.

18 (d) Records of outstanding payment instruments.

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

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

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

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

27 (3) A licensee or other person may maintain the records

1 described in subsection (1) outside of this state if they are made  
2 accessible to the commissioner.

3       Sec. 26. (1) If a licensee or authorized delegate files a  
4 suspicious activity report with an agency of the federal  
5 government, the licensee or authorized delegate shall also, within  
6 24 hours, file a copy of the suspicious activity report with the  
7 department of state police.

8       (2) A licensee or authorized delegate may file the suspicious  
9 activity report with the department of state police under  
10 subsection (1) in any manner allowed by federal law or regulation  
11 or in any other manner acceptable to the department of state  
12 police.

13       (3) Except for a violation of 31 USC 5318(g), a licensee or  
14 authorized delegate or a director, officer, employee, or agent of  
15 the licensee or authorized delegate is not liable in any civil or  
16 governmental action for filing a copy of a suspicious activity  
17 report under this section or failing to notify a customer or any  
18 other person of the filing.

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

25       (2) This section does not apply to, and does not prohibit the  
26 furnishing of information or documents to, any federal, foreign, or  
27 out-of-state regulatory agency with jurisdiction over a licensee

1 and is not applicable to any disclosure made in the public interest  
2 by the commissioner, at his or her discretion.

3       Sec. 31. (1) A licensee shall maintain at all times  
4 permissible investments that have a market value computed in  
5 accordance with generally accepted accounting principles of not  
6 less than the aggregate amount of all of its outstanding payment  
7 instruments issued or sold and money transmitted by the licensee or  
8 its authorized delegates.

9       (2) The commissioner may limit the extent to which a type of  
10 investment within a class of permissible investments is considered  
11 a permissible investment by any licensee, except for money and  
12 certificates of deposit issued by a depository financial  
13 institution. The commissioner by order or declaratory ruling may  
14 allow other types of investments that the commissioner determines  
15 to have a safety substantially equivalent to other permissible  
16 investments.

17       (3) Even if commingled with other assets of a licensee,  
18 permissible investments are held in trust for the benefit of the  
19 purchasers and holders of the licensee's outstanding payment  
20 instruments in the event of bankruptcy or receivership of the  
21 licensee.

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

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

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

3 (b) A banker's acceptance or bill of exchange that is eligible  
4 for purchase upon endorsement by a member bank of the federal  
5 reserve system and is eligible for purchase by a federal reserve  
6 bank.

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

10 (d) An investment security that is an obligation of the United  
11 States or a department, agency, or instrumentality of the United  
12 States; an investment in an obligation that is guaranteed fully as  
13 to principal and interest by the United States; or an investment in  
14 an obligation of a state or a governmental subdivision, agency, or  
15 instrumentality of a state.

16 (e) A receivable that is payable to a licensee from its  
17 authorized delegate, in the ordinary course of business, pursuant  
18 to contracts that are not past due or doubtful of collection, if  
19 the aggregate amount of receivables under this subdivision does not  
20 exceed 20% of the total permissible investments of a licensee and  
21 the licensee does not hold at 1 time receivables under this  
22 subdivision in any 1 person aggregating more than 10% of the  
23 licensee's total permissible investments.

24 (f) A share or a certificate issued by an open-end management  
25 investment company that is registered with the United States  
26 securities and exchange commission under the investment company act  
27 of 1940, 15 USC 80a-1 to 80a-64, and whose portfolio is restricted

1 by the management company's investment policy to investments  
2 specified in subdivisions (a) to (d).

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

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

13 (b) A share of a person traded on a national securities  
14 exchange or a national over-the-counter market or a share or a  
15 certificate issued by an open-end management investment company  
16 that is registered with the United States securities and exchange  
17 commission under the investment company act of 1940, 15 USC 80a-1  
18 to 80a-64, and whose portfolio is restricted by the management  
19 company's investment policy to shares of a person traded on a  
20 national securities exchange or a national over-the-counter market,  
21 if the aggregate of investments under this subdivision does not  
22 exceed 20% of the total permissible investments of a licensee and  
23 the licensee does not at 1 time hold investments in any 1 person  
24 aggregating more than 10% of the licensee's total permissible  
25 investments.

26 (c) A demand-borrowing agreement made to a corporation or a  
27 subsidiary of a corporation whose securities are traded on a

1 national securities exchange, if the aggregate of the amount of  
2 principal and interest outstanding under demand-borrowing  
3 agreements under this subdivision does not exceed 20% of the total  
4 permissible investments of a licensee and the licensee does not at  
5 1 time hold principal and interest outstanding under demand-  
6 borrowing agreements under this subdivision with any 1 person  
7 aggregating more than 10% of the licensee's total permissible  
8 investments.

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

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

14 Sec. 33. (1) An agreement between a licensee and an authorized  
15 delegate shall be in writing and require the authorized delegate to  
16 operate in compliance with this act and other applicable law. The  
17 licensee shall furnish in writing to each authorized delegate  
18 policies and procedures sufficient for compliance with this act and  
19 other applicable law.

20 (2) An authorized delegate shall remit all money owing to the  
21 licensee in accordance with the terms of the agreement between the  
22 licensee and the authorized delegate.

23 (3) If a license is suspended or revoked, the commissioner  
24 shall notify the licensee and order the licensee to send a notice  
25 to its authorized delegates directing them to cease providing money  
26 transmission services on behalf of the licensee, and the authorized  
27 delegate shall immediately cease providing money transmission

1 services as an authorized delegate of the licensee.

2 (4) An authorized delegate shall not provide money  
3 transmission services outside the scope of activity permissible  
4 under the agreement between the authorized delegate and the  
5 licensee, except activity in which the authorized delegate is  
6 otherwise authorized to engage. An authorized delegate of a  
7 licensee holds all money received from providing money transmission  
8 services, reduced by any fees owed to the authorized delegate by  
9 the licensee, in escrow for the benefit of the licensee.

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

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

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

20 (3) All funds received by an authorized delegate from the sale  
21 of a payment instrument, less fees, shall be held in escrow for the  
22 licensee from the time the funds are received by the authorized  
23 delegate until the time the funds are remitted to the licensee.

24 (4) If an authorized delegate commingles any of the funds  
25 received with any other funds or property owned or controlled by  
26 the authorized delegate, all commingled funds and other property  
27 are held in escrow for the licensee in an amount equal to the

1 amount of the funds due the licensee.

2 (5) An authorized delegate shall report to the licensee the  
3 theft or loss of a payment instrument within 24 hours after the  
4 theft or loss.

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

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

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

15 (c) The licensee engages in fraud, intentional  
16 misrepresentation, or gross negligence.

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

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

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

27 (g) The licensee fails to maintain the minimum net worth

1 required under section 13(1) or is insolvent, suspends payment of  
2 its obligations, or makes a general assignment for the benefit of  
3 its creditors.

4 (h) The licensee does not remove an authorized delegate after  
5 the commissioner issues and serves upon the licensee an order that  
6 includes a finding that the authorized delegate has violated this  
7 act.

8 (2) In determining whether a licensee is engaging in an unsafe  
9 or unsound practice, the commissioner may consider the size and  
10 condition of the licensee's money transmission services business,  
11 the magnitude of the loss, the gravity of the violation of this  
12 act, the previous conduct of the person involved, and other factors  
13 the commissioner considers relevant.

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

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

24 (3) A person that knowingly engages in an activity for which a  
25 license is required under this act, is not licensed under this act,  
26 and receives more than \$500.00 in compensation within a 30-day  
27 period from that activity is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than  
2 \$500.00, or both. A court shall order a person convicted of  
3 violating subsection (1) or (2) to pay restitution as provided in  
4 section 1a of chapter IX of the code of criminal procedure, 1927 PA  
5 175, MCL 769.1a, and the crime victim's rights act, 1985 PA 87, MCL  
6 780.751 to 780.834.

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

14       (2) If the commissioner issues a summary suspension order  
15 under section 92 of the administrative procedures act of 1969, 1969  
16 PA 306, MCL 24.292, an administrative law hearings examiner shall  
17 grant a request to dissolve a summary suspension order unless the  
18 examiner finds that an imminent threat of financial loss or  
19 imminent threat to the public welfare exists that requires an  
20 emergency action and continuation of the summary suspension order.

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

24       Sec. 44. (1) If in the opinion of the commissioner a licensee  
25 is, has, or is about to engage in a practice that poses a threat of  
26 financial loss or threat to the public welfare or is, has, or is  
27 about to violate a law, rule, or order, the commissioner may issue

1 and serve on the licensee a cease and desist order under this  
2 section.

3 (2) A cease and desist order issued under this section shall  
4 contain a statement of the facts constituting the alleged practice  
5 or violation and shall fix a time and place for a hearing to  
6 determine if the commissioner should issue an order to cease and  
7 desist against the licensee.

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

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

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

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

1           Sec. 45. The commissioner may promulgate rules under the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
3 24.328, that he or she considers necessary to implement and enforce  
4 this act.

5           Sec. 46. The commissioner may assess a civil fine against a  
6 person that violates this act, a rule promulgated or an order or  
7 ruling issued by the commissioner under this act, or any other  
8 applicable state or federal law in an amount that does not exceed  
9 \$10,000.00 per day for each day the violation continues, plus this  
10 state's costs and expenses for the investigation and prosecution of  
11 the matter, including reasonable attorney fees.

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

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

1           (3) If, after a hearing held under subsection (2), the  
2 commissioner finds that any of the grounds specified in the notice  
3 have been established, the commissioner may issue an order of  
4 suspension or prohibition from being a licensee or registrant or  
5 from being employed by, an agent of, or a control person of any  
6 licensee under this act or a licensee or registrant under any  
7 financial licensing act.

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

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

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

26           (7) Unless otherwise agreed to by the commissioner and the  
27 person served with an order issued under subsection (6), the

1 commissioner shall hold the hearing required under subsection (2)  
2 to review a suspension not earlier than 5 days or later than 20  
3 days after the date of the notice.

4 (8) If a person is convicted of a felony involving fraud,  
5 dishonesty, breach of trust, or money laundering, the commissioner  
6 may issue an order suspending or prohibiting that person from being  
7 a licensee and from being employed by, an agent of, or a control  
8 person of any licensee under this act or a licensee or registrant  
9 under a financial licensing act. After 5 years from the date of the  
10 order, the person subject to the order may apply to the  
11 commissioner to terminate the order.

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

16 Enacting section 1. The sale of checks act, 1960 PA 136, MCL  
17 487.901 to 487.916, is repealed effective January 1, 2007.

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