

HOUSE BILL No. 5328

October 18, 2005, Introduced by Reps. Hunter, Lemmons, III and Tobocman and referred to the Committee on Banking and Financial Services.

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.

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

1 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 indirectly,
6 at least 25% of a class of voting securities or voting interests of
7 a licensee or person in control of a licensee.

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

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

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

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

25 (h) "Executive officer" means an officer, member, or partner
26 of a licensee, including, but not limited to, a chief executive
27 officer, president, vice president, chief financial officer,

1 controller, compliance officer, or any other similar position.

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

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

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

9 Sec. 3. As used in this act:

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

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

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

26 (d) "Outstanding payment instrument" means any check, draft,
27 money order, travelers check, other written instrument, electronic

1 or wire transfer, stored value device, or facsimile issued by a
2 licensee that has been sold in the United States directly by the
3 licensee or any payment instrument issued by the licensee that has
4 been sold by the licensee or an authorized delegate in the United
5 States, that has been reported to the licensee as having been sold,
6 and that has not yet been paid by or for the licensee.

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

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

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

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

25 (i) "Stored value device" means a card or other tangible
26 object used for the transmission or payment of money that contains
27 a microprocessor chip, magnetic stripe, or other means for the

1 storage of information; that is prefunded; and the value of which
2 is reduced after each use. The term does not include a tangible
3 object the value of which is redeemable in the issuer's goods and
4 services.

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

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

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

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

13 (a) The United States or a department, agency, or
14 instrumentality of the United States.

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

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

20 (d) A depository financial institution, bank holding company,
21 office of an international banking corporation, or branch of a
22 foreign bank; a bank service company organized under the bank
23 service company act, 12 USC 1861 to 1867; or a corporation
24 organized under the Edge act, 12 USC 611 to 633.

25 (e) Electronic funds transfer of governmental benefits for a
26 federal, state, county, or governmental agency by a contractor on
27 behalf of the United States or a department, agency, or

1 instrumentality of the United States or a state or governmental
2 subdivision, agency, or instrumentality of a state.

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

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

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

14 (i) An operator of a payment system, to the extent that it
15 provides processing, clearing, settlement, or other similar
16 services between or among persons excluded by this section in
17 connection with wire transfers, credit card transactions, debit
18 card transactions, stored value transactions, automated
19 clearinghouse transfers, or other similar funds transfers or
20 transactions.

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

24 (k) A person that provides money transmission services in this
25 state but does not receive \$3,000.00 or more for transmission in
26 any period of 7 consecutive calendar days.

27 Sec. 11. (1) Except as otherwise provided in this section and

1 subject to section 4, a person shall not provide money transmission
2 services in this state after December 31, 2005 without a license
3 under this act or a class I license issued under the consumer
4 financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

5 (2) A person licensed under the sale of checks act, 1960 PA
6 136, MCL 487.901 to 487.916, on the day before the effective date
7 of this act may continue to provide money transmission services
8 under that license until December 31, 2005.

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

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

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

18 (b) A list of any criminal convictions of the applicant and
19 any material litigation in which the applicant was involved in the
20 10-year period preceding the submission of the application.

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

24 (d) A list of the applicant's proposed authorized delegates
25 and the locations in this state where the applicant and its
26 authorized delegates propose to engage in providing money
27 transmission services.

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

5 (f) Information concerning any bankruptcy or receivership
6 proceedings affecting the applicant.

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

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

12 (i) Any other information the commissioner reasonably requires
13 with respect to the applicant.

14 (2) If an applicant is not a natural person, the applicant
15 shall also provide all of the following information with the
16 application:

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

19 (b) A brief description of the structure or organization of
20 the applicant, including any parent or subsidiary of the applicant,
21 and whether the applicant or a parent or subsidiary of the
22 applicant is publicly traded.

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

25 (d) The name, all assumed or trade names, all business and
26 residential addresses, and the employment history for the 10-year
27 period preceding the submission of the application of each control

1 person of the applicant.

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

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

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

15 (h) If the applicant is a wholly owned subsidiary of a
16 corporation publicly traded outside the United States, a copy of
17 any documentation similar to that described in subdivision (g) that
18 is filed with the regulator of the parent corporation's domicile
19 outside the United States.

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

22 (j) Any other information the commissioner reasonably requires
23 with respect to the applicant.

24 Sec. 13. (1) At the time of filing an application for a
25 license under this act, an applicant shall provide the commissioner
26 with copies of the applicant's financial statements for the most
27 recent fiscal year and, if available, for the 2-year period

1 preceding the submission of the application. The financial
2 statements shall meet all of the following:

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

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

11 (c) Are in the form prescribed by the commissioner, except
12 that financial statements prepared by or reviewed by an independent
13 certified public accountant may be in the form prescribed by that
14 accountant.

15 (d) Are prepared in accordance with generally accepted
16 accounting principles.

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

20 (3) At the time of the filing of an application and at all
21 times after a license is issued, an applicant shall be registered,
22 if required, or otherwise qualified to do business in this state.

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

26 (5) An applicant shall include with an application for a
27 license under this act a surety bond that meets all of the

1 following:

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

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

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

18 (6) The aggregate liability of a surety under a bond issued
19 for purposes of subsection (5) shall not exceed the principal
20 amount of the bond.

21 Sec. 14. (1) When the commissioner receives a completed
22 application for a license under this act, the commissioner shall
23 investigate the financial condition and responsibility, financial
24 and business experience, character, and general fitness of the
25 applicant and may reasonably conduct a similar investigation of
26 each control person of the applicant under this subsection. The
27 commissioner may conduct an on-site investigation of the applicant.

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

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

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

13 (b) That the financial condition and responsibility, financial
14 and business experience, character, and general fitness of the
15 applicant and the experience, character, and general fitness of
16 each control person and any shareholders of the applicant meet the
17 requirements of this act.

18 (c) That the applicant commands the confidence of the public
19 and warrants the belief that the applicant and its executive
20 officers will comply with the law.

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

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

27 (5) The commissioner may for good cause extend the 120-day

1 time period described in subsection (2).

2 (6) An applicant whose application is denied by the
3 commissioner under this act may appeal within 30 days after the
4 date of the notice of the denial and request a hearing on the
5 denial.

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

14 (2) A license issued under this act expires on December 31 of
15 each year unless earlier suspended, surrendered, or revoked under
16 this act. A licensee may renew a license by filing an application
17 for a license renewal, in the form and medium prescribed by the
18 commissioner, and paying the license fee for the renewal year, on
19 or before the December 1 preceding the renewal year. The
20 commissioner shall not renew a license if the license fee for the
21 renewal term is not paid.

22 Sec. 16. (1) In addition to any fees established by the
23 commissioner, a licensee shall pay the actual travel, lodging, and
24 meal expenses incurred by any agency employee who travels outside
25 of this state to examine the records of the licensee or investigate
26 the licensee. An agency employee who incurs expenses under this
27 subsection shall comply with any applicable provisions of the

1 standardized travel regulations issued by the department of
2 management and budget and civil service commission.

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

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

10 Sec. 21. The commissioner may conduct an examination or
11 investigation of a licensee or any of its authorized delegates.
12 Except as provided in section 27, the commissioner and the agency
13 shall not disclose information obtained in an examination or
14 investigation.

15 Sec. 22. (1) The commissioner may conduct an on-site
16 examination or investigation of records maintained under section
17 25, including a joint examination or investigation conducted with
18 representatives of other departments or agencies of this state, 1
19 or more agencies of another state, or of the federal government.

20 (2) The commissioner may accept an examination or
21 investigation report of a department or agency of this state or of
22 another state or of the federal government or a report prepared by
23 a certified public accountant instead of conducting an examination
24 or investigation.

25 (3) A joint examination or investigation or an acceptance of
26 an examination or investigation report under this section does not
27 preclude the commissioner from conducting his or her own

1 examination or investigation.

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

5 Sec. 23. (1) If there is a change in any information provided
6 in a licensee's initial or renewal application, the licensee shall
7 file the changed information with the commissioner before the
8 change occurs, unless the commissioner prescribes a different
9 deadline for filing the changed information that is not later than
10 5 business days after the change occurs. The commissioner shall
11 consider whether it is feasible for the licensee to file the
12 changed information before the change occurs in prescribing a
13 different deadline.

14 (2) A licensee that submits a renewal application to the
15 commissioner shall include with the application a current list of
16 the names and street addresses of each authorized delegate and
17 location in this state where the licensee or authorized delegates
18 of the licensee provide money transmission services.

19 (3) A licensee shall file a report with the agency within 3
20 business days after the licensee has reason to know of the
21 occurrence of any of the following events:

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

25 (b) The filing of a petition by or against the licensee for
26 receivership, the commencement of any other judicial or
27 administrative proceeding for the licensee's dissolution or

1 reorganization, or the making of a general assignment for the
2 benefit of its creditors.

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

6 (d) A charge or conviction of the licensee or of an executive
7 officer, manager, director, or control person of the licensee for a
8 felony.

9 (e) A charge or conviction of an authorized delegate for a
10 felony.

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

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

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

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

18 (2) After review of a request for approval under subsection
19 (1), the commissioner may require the licensee to provide
20 additional information concerning each proposed control person of
21 the licensee. However, the commissioner shall only require that the
22 licensee provide additional information of the same type required
23 of the licensee or any control person of the licensee as part of
24 the licensee's original license or renewal application.

25 (3) The commissioner shall approve a request for change of
26 control under subsection (1) if, after investigation, the
27 commissioner determines that the person or group of persons

1 requesting approval has the experience, character, and general
2 fitness to operate the licensee in a lawful and proper manner.

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

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

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

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

11 (c) Bank statements and bank reconciliation records.

12 (d) Records of outstanding payment instruments.

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

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

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

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

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

24 Sec. 26. (1) The commissioner, each former commissioner, and
25 each current and former deputy, agent, and employee of the agency
26 shall keep secret all facts and information obtained in the course
27 of their duties, unless that person is required under law to report

1 on, take official action concerning, or testify in any proceedings
2 regarding a licensee or the activities of a licensee.

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

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

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

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

26 (4) As used in this section, "permissible investments" means
27 the investments described in section 32 or allowed by the

1 commissioner under subsection (2).

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

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

7 (b) A banker's acceptance or bill of exchange that is eligible
8 for purchase upon endorsement by a member bank of the federal
9 reserve system and is eligible for purchase by a federal reserve
10 bank.

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

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

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

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

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

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

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

1 aggregating more than 10% of the licensee's total permissible
2 investments.

3 (c) A demand-borrowing agreement made to a corporation or a
4 subsidiary of a corporation whose securities are traded on a
5 national securities exchange, if the aggregate of the amount of
6 principal and interest outstanding under demand-borrowing
7 agreements under this subdivision does not exceed 20% of the total
8 permissible investments of a licensee and the licensee does not at
9 1 time hold principal and interest outstanding under demand-
10 borrowing agreements under this subdivision with any 1 person
11 aggregating more than 10% of the licensee's total permissible
12 investments.

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

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

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

24 (2) An authorized delegate shall remit all money owing to the
25 licensee in accordance with the terms of the agreement between the
26 licensee and the authorized delegate.

27 (3) If a license is suspended or revoked, the commissioner

1 shall notify the licensee and order the licensee to send a notice
2 to its authorized delegates directing them to cease providing money
3 transmission services on behalf of the licensee, and the authorized
4 delegate shall immediately cease providing money transmission
5 services as an authorized delegate of the licensee.

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

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

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

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

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

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

6 (5) An authorized delegate shall report to the licensee the
7 theft or loss of a payment instrument within 24 hours after the
8 theft or loss.

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

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

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

19 (c) The licensee engages in fraud, intentional
20 misrepresentation, or gross negligence.

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

25 (e) The experience, character, or general fitness of the
26 licensee, authorized delegate, or control person indicates that it
27 is not in the public interest to permit the person to provide money

1 transmission services.

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

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

8 (h) The licensee does not remove an authorized delegate after
9 the commissioner issues and serves upon the licensee an order that
10 includes a finding that the authorized delegate has violated this
11 act.

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

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

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

1 (3) A person that knowingly engages in an activity for which a
2 license is required under this act, is not licensed under this act,
3 and receives more than \$500.00 in compensation within a 30-day
4 period from that activity is guilty of a felony punishable by
5 imprisonment for not more than 5 years or a fine of not more than
6 \$100,000.00, or both. A court shall order a person convicted of
7 violating subsection (1) or (2) to pay restitution as provided in
8 section 1a of chapter IX of the code of criminal procedure, 1927 PA
9 175, MCL 769.1a, and the crime victim's rights act, 1985 PA 87, MCL
10 780.751 to 780.834.

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

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

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

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

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

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

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

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

1 service.

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

5 Sec. 45. The commissioner may promulgate rules under the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
7 24.328, that he or she considers necessary to implement and enforce
8 this act.

9 Sec. 46. The commissioner may assess a civil fine against a
10 person that violates this act, a rule promulgated or an order or
11 ruling issued by the commissioner under this act, or any other
12 applicable state or federal law in an amount that does not exceed
13 \$10,000.00 per day for each day the violation continues, plus this
14 state's costs and expenses for the investigation and prosecution of
15 the matter, including reasonable attorney fees.

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

26 (2) A notice issued under subsection (1) shall contain a
27 statement of the facts supporting the prohibition and, except as

1 provided under subsection (7), set a time and date for a hearing,
2 within 60 days after the date of the notice. If the person does not
3 appear at the hearing, he or she consents to the issuance of an
4 order in accordance with the notice.

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

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

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

21 (6) If the commissioner considers that a person served a
22 notice under subsection (1) poses an imminent threat of financial
23 loss to purchasers of payment instruments from a licensee, the
24 commissioner may serve upon the person an order of suspension from
25 being employed by, an agent of, or a control person of any
26 licensee. The suspension is effective on the date the order is
27 issued and, unless stayed by a court, remains in effect pending the

1 completion of a review as provided under this section and until the
2 commissioner has dismissed the charges specified in the order.

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

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

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

20 Enacting section 1. The sale of checks act, 1960 PA 136, MCL
21 487.901 to 487.916, is repealed.