

## **MONEY TRANSMISSION SERVICES ACT**

### **Act 250 of 2006**

AN ACT 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.

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

*The People of the State of Michigan enact:*

#### **487.1001 Short title.**

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1002 Definitions; A to L.**

Sec. 2. As used in this act:

- (a) "Agency" or "department" means the department of insurance and financial services.
- (b) "Agent of a payee" means a person appointed by a payee to collect and process payments as the bona fide agent of the payee.
- (c) "Applicant" means a person that files an application for a license under this act.
- (d) "Authorized delegate" means a person that a licensee designates to provide money transmission services in this state on behalf of the licensee.
- (e) "Closed-loop prepaid access" means access to funds or the value of funds that is paid in advance, may be retrieved or transferred at some time in the future through a device or vehicle, and may be used only to acquire goods or services in transactions that involve 1 or more specific merchants or 1 or more specific locations.
- (f) "Commissioner" or "director" means the director of the department or his or her designee.
- (g) "Control" means any of the following:
  - (i) Ownership of, or the power to vote, directly or indirectly, at least 25% of a class of voting securities or voting interests of a licensee or person in control of a licensee.
  - (ii) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee.
  - (iii) The power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee.
- (h) "Control person" means a director, manager, or executive officer of a licensee or applicant or an individual who has the authority to participate in the direction, directly or indirectly through 1 or more other individuals, of the management or policies of a licensee or applicant.
- (i) "Depository financial institution" means a bank, national bank, savings and loan association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States whose deposits are insured by an agency of the federal government.
- (j) "Device or vehicle" means an object or information used to provide closed-loop prepaid access or prepaid access, such as a card, code, electronic serial number, mobile identification number, or personal identification number. A device or vehicle may be in either tangible or electronic form.
- (k) "Executive officer" means an officer, member, or partner of a licensee, including, but not limited to, a chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.
- (l) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
- (m) "Licensee" means a person that is licensed or required to be licensed under this act.
- (n) "Location" means a place of business at which activities regulated by this act occur.

**History:** 2006, Act 250, Imd. Eff. July 3, 2006;—Am. 2018, Act 573, Eff. Mar. 28, 2019.

#### **487.1003 Definitions; M to T.**

Sec. 3. As used in this act:

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

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

(c) "Money transmission services" means selling or issuing payment instruments or closed-loop prepaid access or prepaid access devices or vehicles or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online, or telecommunications services or network access.

(d) "Outstanding payment instrument" means any check, draft, money order, travelers check, other written instrument, electronic or wire transfer, closed-loop prepaid access or prepaid access device or vehicle, or facsimile issued by a licensee that has been sold in the United States directly by the licensee or any payment instrument issued by the licensee that has been sold by the licensee or an authorized delegate in the United States, that has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

(e) "Payee" means the provider of goods or services, not including money transmission services, that is owed payment of money or other monetary value from the person that is paying for the goods or services.

(f) "Payment instrument" means any electronic or written check, draft, money order, travelers check, or other wire, electronic, or written instrument or order for the transmission or payment of money, sold or issued to 1 or more persons, whether or not the instrument is negotiable. The term includes any closed-loop prepaid access or prepaid access device or vehicle. The term does not include any credit card voucher, letter of credit, or tangible object redeemable by the issuer in goods or services.

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

(h) "Prepaid access" means access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through a device or vehicle. The term does not include closed-loop prepaid access.

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006;—Am. 2018, Act 573, Eff. Mar. 28, 2019.

#### **487.1004 Applicability of act.**

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

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

(b) The United States Postal Service or a contractor to the extent that it provides money transmission services on behalf of the United States Postal Service.

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

(d) A depository financial institution, office of an international banking corporation, or branch of a foreign bank; a bank holding company or subsidiary, as those terms are defined in section 2(a)(1) and 2(d) of the bank holding company act of 1956, 12 USC 1841; a bank service company organized under the bank service company act, 12 USC 1861 to 1867; a subsidiary or affiliate of a depository financial institution, or a subsidiary or affiliate of a holding company of a depository financial institution, if the depository financial institution maintains its main office or a branch office in this state; a credit union service organization, as that term is defined in section 102 of the credit union act, 2003 PA 215, MCL 490.102; or a corporation organized under the Edge act, 12 USC 611 to 633.

(e) A person, to the extent that it provides money transmission services as an agent for an entity described in subdivision (d), if both of the following are met:

(i) The agency relationship between the person that is providing the money transmission services and the entity described in subdivision (d) is established through written agreement.

(ii) The entity described in subdivision (d) remains responsible for providing the money transmission services to its customers.

(f) A person to the extent that it issues, sells, or distributes a closed-loop prepaid access device or vehicle, if the funds associated with that device or vehicle do not exceed \$2,000.00 maximum value on any day.

(g) A person to the extent that it is acting as an agent of a payee, if the person demonstrates to the director that all of the following are met:

(i) There exists a written agreement between the payee and agent directing the agent to collect and process payments on the payee's behalf.

(ii) The payee holds the agent out to the public as accepting payments on the payee's behalf.

(iii) Payment is treated as received by the payee at the time it is received by the agent.

(h) An electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States or a state or governmental subdivision, agency, or instrumentality of a state.

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

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

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

(l) An operator of a payment system, to the extent that it provides processing, clearing, settlement, or other similar services between or among persons excluded under this section in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, closed-loop prepaid access transactions, automated clearinghouse transfers, or other similar funds transfers or transactions.

(m) A person that is registered as a securities broker-dealer under federal or state securities laws, to the extent of its operation as a registered broker-dealer.

**History:** 2006, Act 250, Imd. Eff. July 3, 2006;—Am. 2018, Act 573, Eff. Mar. 28, 2019.

#### **487.1011 Money transmission services; license required; exception.**

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1012 License application; form; information required.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1013 Financial statements; net worth; qualification to do business; application fee; surety bond; aggregate liability of surety; limitation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

**487.1014 Investigation; completed application; time period; issuance of license; fee; extension of time period; denial; request for hearing.**

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

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

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

**487.1015 Fee schedule; expiration and renewal of license.**

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

**487.1016 Travel expenses; recovery of fees and fines; collection; disposition.**

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

**487.1021 Information obtained in examination or investigation; disclosure prohibited.**

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



**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1022 Joint examination or investigation.**

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1023 Changed information; filing; events requiring filing of report.**

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1024 Proposed change of control of licensee; request for approval; additional information; approval by commissioner; determination.**

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1025 Records.**

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

- (a) A record of each payment instrument from the date it was created.
- (b) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.
- (c) Bank statements and bank reconciliation records.
- (d) Records of outstanding payment instruments.
- (e) Records of each payment instrument paid within the 3-year period.
- (f) A list of the last known names and addresses of all of the licensee's authorized delegates.
- (g) Any other records the commissioner reasonably requires.
- (2) The records described in subsection (1) may be stored on any tangible medium or in any electronic or other medium that is immediately retrievable in perceivable form.
- (3) A licensee or other person may maintain the records described in subsection (1) outside of this state if they are made accessible to the commissioner.

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1026 Disclosure of information.**

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1031 Permissible investments.**

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1032 Investments permitted under MCL 487.1031; limitation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1033 Agreement between licensee and authorized delegate.**

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1034 Authorized delegate; prohibited conduct; duties.**

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

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

(3) All funds received by an authorized delegate from the sale of a payment instrument, less fees, shall be



held in trust for the licensee from the time the funds are received by the authorized delegate until the time the funds are remitted to the licensee.

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1041 Denying, suspending, not renewing, or revoking license; placing license in receivership; revoking designation of authorized delegate; conditions.**

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

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

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

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

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1042 Violations; penalties; restitution.**

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1043 Summary suspension order.**

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1044 Cease and desist order.**

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

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1045 Rules.**

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1046 Civil fine.**

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.

#### **487.1047 Order suspending or prohibiting person from being licensee and from being employed by, agent of, or control person of licensee.**

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

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

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

(4) An order issued under subsection (2) or (3) is effective when served on the person subject to the order. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee,

agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

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

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

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

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

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

**History:** 2006, Act 250, Imd. Eff. July 3, 2006.