

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER: 14

NJSA: 17:15C-1 to 17:15C-27

"Money transmitters -- issuers of payment instruments"

BILL NO: A956 (Substituted for S306)

SPONSOR(S): Augustine and Cohen

DATE INTRODUCED: Pre-filed

COMMITTEE:

ASSEMBLY: Banking

SENATE: ~~~~

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE:

ASSEMBLY: March 16, 1998

SENATE: March 19, 1998

DATE OF APPROVAL: May 1, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 1st reprint

(Amendments during passage denoted by superscript numbers)

A956

SPONSORS STATEMENT: *Yes* (Begins on page 19 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: Yes

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

S306

SPONSORS STATEMENT: *Yes* (Begins on page 20 of original bill)
(Bill and Sponsors Statement identical to A956)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes* (Identical to Assembly Statement for A956)

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *Yes*

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

[First Reprint]

ASSEMBLY, No. 956

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman ALAN M. AUGUSTINE

District 22 (Middlesex, Morris, Somerset and Union)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

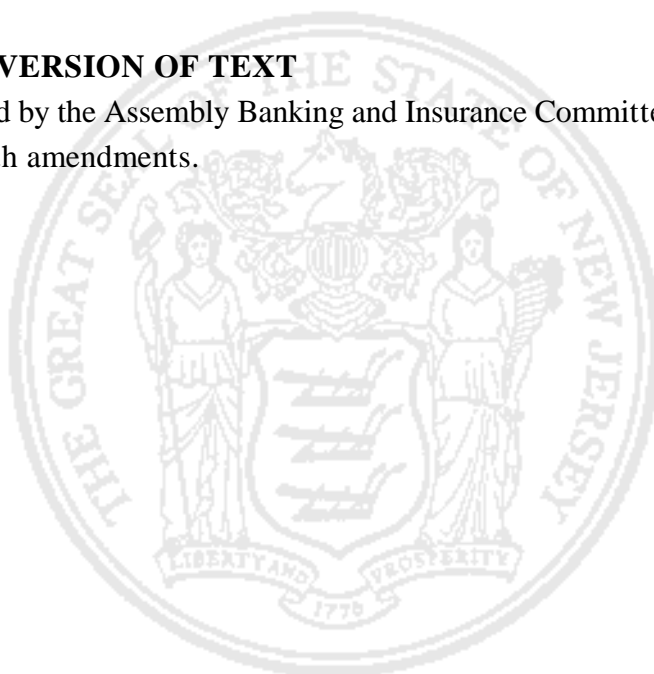
Senators Inverso, Baer and Bryant

SYNOPSIS

Provides for the licensing and regulation of money transmitters.

CURRENT VERSION OF TEXT

As reported by the Assembly Banking and Insurance Committee on February 23, 1998, with amendments.



(Sponsorship Updated As Of: 3/20/1998)

1 AN ACT concerning money transmitters, supplementing Title 17 of the
2 Revised Statutes and repealing chapter 15 of Title 17 of the
3 Revised Statutes and P.L.1964, c.273.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the "New Jersey
9 Money Transmitters Act."

10
11 2. As used in this act:

12 "Applicant" means a person filing an application for a license under
13 this act.

14 "Authorized delegate" means an entity authorized by the licensee
15 pursuant to the provisions of section 17 of this act to sell or issue
16 payment instruments or engage in the business of transmitting money
17 on behalf of a licensee.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Control" means ownership of, or the power to vote, 25 percent or
21 more of the outstanding voting securities of a licensee or controlling
22 person. For purposes of determining the percentage of a licensee
23 controlled by any person, there shall be aggregated with the person's
24 interest the interest of any other person controlled by that person or
25 by any spouse, parent, or child of that person.

26 "Controlling person" means any person in control of a licensee.

27 "Department" means the Department of Banking and Insurance.

28 "Executive officer," means the licensee's president, chairman of the
29 executive committee, senior officer responsible for the licensee's
30 business in this State, chief financial officer and any other person who
31 performs similar functions.

32 ¹ "Foreign money transmitter" means a person who engages, in this
33 State, only in the business of the receipt of money for transmission or
34 transmitting money to locations outside of the United States by any
35 and all means, including but not limited to payment instrument, wire,
36 facsimile, electronic transfer, or otherwise for a fee, commission or
37 other benefit.¹

38 "Key shareholder" means any person, or group of persons acting in
39 concert, who is the owner of 25 percent or more of any voting class
40 of an applicant's stock.

41 "Licensee" means a person licensed under this act.

42 "Location" means a place of business at which activities regulated

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ **Assembly ABI committee amendments adopted February 23, 1998.**

1 by this act occur.

2 "Material litigation" means any litigation that, according to
3 generally accepted accounting principles, is deemed significant to any
4 applicant's or licensee's financial health and would be required to be
5 referenced in that entity's annual audited financial statements, report
6 to shareholders or similar documents.

7 "Money" means a medium of exchange authorized or adopted by
8 the United States or a foreign government as a part of its currency and
9 that is customarily used and accepted as a medium of exchange in the
10 country of issuance.

11 "Money transmitter" means a person who engages in this State in
12 the business of:

13 (1) the sale or issuance of payment instruments for a fee,
14 commission or other benefit;

15 (2) the receipt of money for transmission or transmitting money
16 within the United States or to locations abroad by any and all means,
17 including but not limited to payment instrument, wire, facsimile,
18 electronic transfer, or otherwise for a fee, commission or other benefit;
19 or

20 (3) the receipt of money for obligors for the purpose of paying
21 obligors' bills, invoices or accounts for a fee, commission or other
22 benefit paid by the obligor.

23 "Outstanding payment instrument" means any payment instrument
24 issued by the licensee which has been sold in the United States directly
25 by the licensee or any payment instrument issued by the licensee which
26 has been sold by an authorized delegate of the licensee in the United
27 States, which has been reported to the licensee as having been sold,
28 and which has not yet been paid by or for the licensee.

29 "Payment instrument" means any check, draft, money order,
30 travelers check or other instrument or written order for the
31 transmission or payment of money, sold or issued to one or more
32 persons, whether or not the instrument is negotiable. The term
33 "payment instrument" does not include any credit card voucher, any
34 letter of credit or any instrument which is redeemable by the issuer in
35 goods or services.

36 "Permissible investments" means:

37 (1) cash;

38 (2) certificates of deposit or other debt obligations of a bank,
39 savings bank, savings and loan association, or credit union, either
40 domestic or foreign;

41 (3) bills of exchange or time drafts drawn on and accepted by a
42 commercial bank, otherwise known as bankers' acceptances, which are
43 eligible for purchase by member banks of the Federal Reserve System;

44 (4) any investment which is rated in one of the three highest rating
45 categories by a nationally recognized statistical rating organization;

46 (5) investment securities that are obligations of the United States,

1 its agencies or instrumentalities, or obligations that are guaranteed
2 fully as to principal and interest by the United States, or any
3 obligations of any state, municipality or any political subdivision
4 thereof which is rated in one of the three highest rating categories by
5 a nationally recognized statistical rating organization;

6 (6) shares in a money market mutual fund, interest-bearing bills,
7 notes or bonds, debentures or stock traded on any national securities
8 exchange or on a national over-the-counter market, or mutual funds
9 primarily composed of those securities or a fund composed of one or
10 more permissible investments as set forth in this section;

11 (7) demand borrowing agreements made to a corporation or a
12 subsidiary of a corporation whose capital stock is listed on a national
13 exchange;

14 (8) receivables which are due to a licensee from its authorized
15 delegates pursuant to a contract described in section 17 of this act,
16 which are not past due or doubtful of collection; or

17 (9) any other investments or security device which the
18 commissioner may authorize by rule.

19

20 3. a. This act shall not apply to:

21 (1) The United States or any department, agency, or
22 instrumentality thereof;

23 (2) The United States Postal Service;

24 (3) The State or any political subdivision thereof;

25 (4) Banks, bank holding companies, credit unions, building and
26 loan associations, savings and loan associations, savings banks or
27 mutual banks organized under the laws of any state or the United
28 States, provided that they do not issue or sell payment instruments
29 through authorized delegates who are not banks, bank holding
30 companies, credit unions, building and loan associations, savings and
31 loan associations, savings banks or mutual banks;

32 (5) The provision of electronic transfer of government benefits for
33 any federal, state or county agency as defined in Regulation E,
34 12 C.F.R. s.205.1 et seq., by a contractor for and on behalf of the
35 United States or any department, agency or instrumentality thereof, or
36 any state or political subdivision thereof; and

37 (6) A person licensed to conduct business as a debt adjuster
38 pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.), when acting within
39 the scope of activities regulated by that license.

40 b. Authorized delegates of a licensee, acting within the scope of
41 authority conferred by a written contract as described in section 17 of
42 this act shall not be required to obtain a license pursuant to this act.

43

44 4. a. No person, other than a person exempt from the provisions
45 of this act pursuant to section 3, shall engage in the business of money
46 transmission without a license as provided in this act.

1 b. A licensee may conduct its business in this State at one or more
2 locations, directly or indirectly owned, or through one or more
3 authorized delegates, or both, pursuant to the single license granted to
4 the licensee under this act.

5
6 5. a. ¹Each (1) Except as provided pursuant to paragraph (2)
7 of this subsection a., for a person licensed to engage in business in
8 this State only as a foreign money transmitter, each¹ licensee shall at
9 all times have a net worth of not less than \$100,000, calculated in
10 accordance with generally accepted accounting principles. Licensees
11 engaging in money transmission at more than one location or through
12 authorized delegates shall have an additional net worth of \$25,000 per
13 location or agent located in this State, as applicable, up to a maximum
14 net worth amount of \$1,000,000.

15 ¹(2) Each person licensed to engage in business in this State
16 only as a foreign money transmitter shall at all times have a net worth
17 of not less than \$50,000, calculated in accordance with generally
18 accepted accounting principles. Licensees engaging in foreign money
19 transmission at more than one location or through authorized
20 delegates shall have an additional net worth of \$10,000 per location or
21 agent located in this State, as applicable, up to a maximum net worth
22 amount of \$400,000.

23 (3) A person licensed to engage in the business of a foreign
24 money remitter pursuant to R.S.17:15-1 et seq. on the day prior to the
25 effective date of this act, whose license is continued pursuant to
26 subsection b. of section 27 of this act, shall fully comply with the net
27 worth requirements of paragraph (2) of this subsection a. as follows:

28 (a) by the first business day following 90 days after the
29 effective date of this act, have a net worth of \$5,000;

30 (b) by July 1, 1999, have a net worth of \$5,000 plus 25% of
31 the additional net worth amount required pursuant to paragraph (2) of
32 this subsection a.;

33 (c) by July 1, 2000, have a net worth of \$5,000 plus 50% of
34 the additional net worth amount required pursuant to paragraph (2) of
35 this subsection a.; and

36 (d) by July 1, 2001, have a net worth in full compliance with
37 the amount required pursuant to paragraph (2) of this subsection a.¹

38 b. Every corporate applicant, at the time of filing an application
39 and at all times after a license is issued, shall be in good standing in the
40 state of its incorporation. All non-corporate applicants shall, at the
41 time of the filing of an application and at all times after a license is
42 issued, be registered or qualified to do business in this State.

43
44 6. a. ¹Each licensee shall at all times possess a surety bond,
45 irrevocable letter of credit or such other similar security device
46 acceptable to the commissioner in the amount required pursuant to

1 section 8 of this act.

2 b.¹ Each licensee shall at all times possess permissible investments
3 having an aggregate market value, calculated in accordance with
4 generally accepted accounting principles, of not less than the
5 aggregate face amount of all outstanding payment instruments issued
6 or sold by the licensee in the United States. This requirement may be
7 waived by the commissioner if the dollar volume of a licensee's
8 outstanding payment instruments does not exceed the bond or other
9 security devices posted by the licensee pursuant to section 8 of this
10 act.

11 ¹[b.] c.¹ In the event of ¹[bankrutcy] bankruptcy¹ of the licensee,
12 permissible investments, even if commingled with other assets of the
13 licensee, shall be deemed to be held in trust for the benefit of the
14 purchasers and holders of the licensee's outstanding payment
15 instruments by operation of law.

16

17 7. Each application for a license shall be made in writing, under
18 oath, and in a form prescribed by the commissioner. Each application
19 shall contain:

20 a. For all applicants:

21 (1) The exact name of the applicant, the applicant's principal
22 address, any fictitious or trade name used by the applicant in the
23 conduct of its business and the location of the applicant's business
24 records;

25 (2) The history, if any, of the applicant's material litigation and
26 criminal convictions for the five year period prior to the date of the
27 application;

28 (3) A description of the activities conducted by the applicant and
29 a history of operations;

30 (4) A description of the business activities in which the applicant
31 seeks to be engaged in the State;

32 (5) A list identifying the applicant's proposed authorized delegates
33 in the State, if any, at the time of the filing of the license application;

34 (6) A sample authorized delegate contract, if applicable;

35 (7) A sample form of payment instrument, if applicable;

36 (8) Each location at which the applicant and its authorized
37 delegates, if any, propose to conduct the licensed activities in the
38 State;

39 (9) The name and address of each clearing bank on which the
40 applicant's payment instruments will be drawn or through which those
41 payment instruments will be payable;

42 (10) A list identifying each country to which an applicant proposes
43 to transmit money or from which an applicant proposes to receive
44 money transmissions;

45 (11) Federal tax identification number; and

46 (12) Non-refundable application fee as prescribed by regulation by

- 1 the commissioner in an amount not to exceed \$1,000.
- 2 b. If the applicant is a corporation, the applicant shall also provide:
- 3 (1) The date of the applicant's incorporation and state of
4 incorporation;
- 5 (2) A certificate of good standing from the state in which the
6 applicant was incorporated;
- 7 (3) A description of the corporate structure of the applicant,
8 including the identity of any parent or subsidiary of the applicant, and
9 the disclosure of whether any parent or subsidiary is publicly traded on
10 any stock exchange;
- 11 (4) The name, business and residence address, social security
12 number, date of birth and employment history for the past five years
13 of each of the applicant's executive officers and of each officer or
14 manager who will be in charge of the applicant's activities to be
15 licensed under this act;
- 16 (5) The name, business and residence address, social security
17 number, date of birth and employment history for the period five years
18 prior to the date of the application of each key shareholder of the
19 applicant;
- 20 (6) The history, if any, of material litigation and criminal
21 convictions for the five year period prior to the date of the application
22 of every executive officer or key shareholder of the applicant;
- 23 (7) A copy of the applicant's most recent audited financial
24 statements (including balance sheet, statement of income or loss,
25 statement of changes in shareholder equity and statement of changes
26 in financial position) prepared by a certified public accountant or
27 public accountant in good standing and, if available, the applicant's
28 audited financial statements for the immediately preceding three year
29 period. However, if the applicant is a wholly owned subsidiary of
30 another corporation, the applicant may submit either the parent
31 corporation's consolidated audited financial statements for the current
32 year and for the immediately preceding three year period or the parent
33 corporation's Form 10-K reports filed with the Securities and
34 Exchange Commission for the prior three years in lieu of the
35 applicant's financial statements. If the applicant is a wholly owned
36 subsidiary of a corporation having its principal place of business
37 outside the United States, similar documentation filed with the parent
38 corporation's non-United States regulator may be submitted to satisfy
39 this provision;
- 40 (8) Copies of all filings, if any, made by the applicant with the
41 Securities and Exchange Commission, or with a similar regulator in a
42 country other than the United States, within the year preceding the
43 date of filing of the application; and
- 44 (9) Except in the case of a publicly traded corporation, its
45 subsidiaries and affiliates, or a bank, bank holding company,
46 subsidiaries and affiliates thereof, fingerprints of each of the applicant's

1 executive officers and of each officer or manager who will be in charge
2 of the applicant's activities to be licensed hereunder.

3 c. If the applicant is not a corporation, the applicant shall also
4 provide:

5 (1) The name, business and residence address, personal financial
6 statement and employment history for the past five years, social
7 security number, date of birth, and fingerprints of each principal of the
8 applicant and the name, business and residence address, employment
9 history for the past five years, social security number, date of birth,
10 and fingerprints of any other persons who will be in charge of the
11 applicant's activities to be licensed under this act;

12 (2) The place and date of the applicant's registration or
13 qualification to do business in this State;

14 (3) The history, if any, of material litigation and criminal
15 convictions for the five year period prior to the date of the application
16 for each individual having any ownership interest in the applicant and
17 each individual who exercises supervisory responsibility with respect
18 to the applicant's activities; and

19 (4) Copies of the applicant's audited financial statements (including
20 balance sheet, statement of income or loss, and statement of changes
21 in financial position) prepared by a certified public accountant or
22 public accountant in good standing for the current year and, if
23 available, for the immediately preceding two year period; and

24 (5) Alien registration information, if applicable.

25 d. Such other information as the commissioner may require by
26 regulation.

27

28 8. a. ¹Each (1) Except as provided pursuant to paragraph (2)
29 of this subsection a., each¹ application ¹shall be
30 accompanied by a surety bond, irrevocable letter of credit or such
31 other similar security device (hereinafter "security device") acceptable
32 to the commissioner in an amount prescribed by the commissioner by
33 regulation of not less than \$100,000 and not more than \$1,000,000.
34 The security device shall be in a form satisfactory to the commissioner
35 and shall run to the State for the benefit of any person injured by a
36 wrongful act, default, fraud or misrepresentation of the licensee,
37 including its directors, officers, authorized delegates and employees,
38 to secure the faithful performance of the obligations of the licensee
39 with respect to the receipt, handling, transmission, and payment of
40 money in connection with the sale and issuance of payment
41 instruments, transmission of money, or both. In the case of a bond,
42 the bond shall be obtained from a surety company authorized to do
43 business in this State and the aggregate liability of the surety in no
44 event shall exceed the principal sum of the bond.

45 ¹(2) Each application to engage only in the business of a foreign
46 money transmitter shall be accompanied by a surety bond, irrevocable

1 letter of credit or such other similar security device (hereinafter
 2 "security device") acceptable to the commissioner in an amount which
 3 is based on the annual volume of business in this State as reported in
 4 the most recent annual report filed pursuant to section 12 of this act
 5 as set forth in the following schedule:

6	7 <u>Annual Volume of Business</u>	8 <u>Security Device Amount</u>
8	<u>Up to and including \$500,000</u>	<u>\$25,000.</u>
9	<u>Over \$500,000 and up to and including \$1,000,000</u>	<u>\$30,000.</u>
10	<u>Over \$1,000,000 and up to and including \$2,000,000</u>	<u>\$35,000.</u>
11	<u>Over \$2,000,000 and up to and including \$3,000,000</u>	<u>\$40,000.</u>
12	<u>Over \$3,000,000 and up to and including \$4,000,000</u>	<u>\$45,000.</u>
13	<u>Over \$4,000,000 and up to and including \$5,000,000</u>	<u>\$50,000.</u>
14	<u>Over \$5,000,000 and up to and including \$6,000,000</u>	<u>\$55,000.</u>
15	<u>Over \$6,000,000 and up to and including \$7,000,000</u>	<u>\$60,000.</u>
16	<u>Over \$7,000,000 and up to and including \$8,000,000</u>	<u>\$65,000.</u>
17	<u>Over \$8,000,000 and up to and including \$9,000,000</u>	<u>\$70,000.</u>
18	<u>Over \$9,000,000 and up to and including \$10,000,000</u>	<u>\$75,000.</u>
19	<u>Over \$10,000,000 and up to and including \$11,000,000</u>	<u>\$80,000.</u>
20	<u>Over \$11,000,000 and up to and including \$12,000,000</u>	<u>\$80,000.</u>
21	<u>Over \$12,000,000 and up to and including \$13,000,000</u>	<u>\$90,000.</u>
22	<u>Over \$13,000,000 and up to and including \$14,000,000</u>	<u>\$95,000.</u>
23	<u>Over \$14,000,000 and up to and including \$15,000,000</u>	<u>\$100,000.</u>

24
 25 The security device amount required on an annual volume of
 26 business in excess of \$15 million shall be \$100,000 plus an additional
 27 amount set by the commissioner by regulation not to exceed \$900,000.
 28 The security device shall be in a form satisfactory to the commissioner
 29 and shall run to the State for the benefit of any person injured by a
 30 wrongful act, default, fraud or misrepresentation of the licensee,
 31 including its directors, officers, authorized delegates and employees,
 32 to secure the faithful performance of the obligations of the licensee
 33 with respect to the receipt, handling, transmission, and payment of
 34 money in connection with the sale and issuance of payment
 35 instruments, transmission of money, or both. In the case of a bond,
 36 the bond shall be obtained from a surety company authorized to do
 37 business in this State and the aggregate liability of the surety in no
 38 event shall exceed the principal sum of the bond.

39 (3) Persons licensed pursuant to R.S.17:15-1 et seq. on the day
 40 prior to the effective date of this act whose license is continued
 41 pursuant to subsection b. of section 27 of this act shall fully comply
 42 with the requirements of paragraph (2) of this subsection a. as follows:

43 (a) by the first business day following 90 days after the
 44 effective date of this act, have a security device acceptable to the
 45 commissioner of \$25,000;

46 (b) by July 1, 1999, have a security device acceptable to the
 47 commissioner in the amount that is required pursuant to subparagraph
 48 (a) of this paragraph (3), plus 25% of the additional amount required
 49 pursuant to paragraph (2) of this subsection a., if any;

1 (c) by July 1, 2000, have a security device acceptable to the
2 commissioner in the amount that is required pursuant to subparagraph
3 (a) of this paragraph (3), plus 50% of the additional amount required
4 pursuant to paragraph (2) of this subsection a., if any; and

5 (d) by July 1, 2001, have a security device acceptable to the
6 commissioner that is in full compliance with the amount required
7 under this act.¹

8 b. In lieu of the security device or of any portion of the principal
9 thereof, as required by this section, the licensee may deposit with the
10 commissioner, or with banks in this State that the licensee designates
11 and the commissioner approves, cash, interest-bearing stocks and
12 bonds, notes, debentures or other obligations of the United States or
13 any agency or instrumentality thereof, or guaranteed by the United
14 States, or of this State, or of a political subdivision or instrumentality
15 of this State, or guaranteed by this State which is rated in one of the
16 three highest categories by a nationally recognized statistical rating
17 organization, to an aggregate amount, based upon principal amount
18 or market value, whichever is lower, of not less than the amount of the
19 security device or portion thereof. The securities, cash, or both, shall
20 be deposited as aforesaid and held to secure the same obligations as
21 the security device, but the depositor shall be entitled to receive all
22 interest and dividends thereon, shall have the right, with the approval
23 of the commissioner, to substitute other securities for those deposited,
24 and shall be required to do so on written order of the commissioner for
25 good cause shown.

26 c. The security device shall remain in effect until cancellation,
27 which may occur only after thirty days' written notice to the
28 commissioner. Cancellation shall not affect any liability incurred or
29 accrued during that period.

30 d. The security device shall remain in place for no longer than five
31 years after the licensee ceases money transmission operations in the
32 State. However, notwithstanding this provision, the commissioner
33 may permit the security device to be reduced or eliminated prior to
34 that time to the extent that the amount of the licensee's payment
35 instruments outstanding in this State are reduced. The commissioner
36 may also permit a licensee to substitute a letter of credit or other form
37 of security device acceptable to the commissioner for the security
38 device in place at the time the licensee ceases money transmission
39 operations in the State by surrender, revocation or expiration of its
40 license.

41
42 9. a. Upon the filing of a complete application, in the case of an
43 initial application, or the filing of a complete biennial renewal
44 application, the commissioner shall investigate the financial condition
45 and responsibility, financial and business experience, character and
46 general fitness of the applicant for an initial license or a renewal

1 license. The commissioner may conduct an on-site investigation of the
2 applicant for an initial license, the reasonable cost of which shall be
3 borne by the applicant. If the commissioner finds that the applicant's
4 business will be conducted honestly, fairly and in a manner
5 commanding the confidence and trust of the community and that the
6 applicant has fulfilled the requirements imposed by this act and has
7 paid the required license fee, the commissioner shall issue a license to
8 the applicant authorizing the applicant to engage in the licensed
9 activities in this State. If these requirements have not been met, the
10 commissioner shall deny the application in writing, setting forth the
11 reasons for the denial.

12 b. The commissioner shall approve or deny every application for
13 an initial license within 120 days from the date that the applicant has
14 satisfied all requirements for licensure.

15 c. The license fee for each two-year period, or any part thereof,
16 shall be in an amount prescribed by the commissioner by rule or
17 regulation, not to exceed \$4,000. The two-year license period shall be
18 set by the commissioner by rule or regulation. A license shall run from
19 the date of issuance to the end of the biennial period. If the initial
20 license is issued in the second year of the biennial licensing period, the
21 license fee shall be in an amount not to exceed \$2,000.

22 d. Each license issued pursuant to this act shall expire at the end
23 of the biennial licensing period. Licenses shall not be transferable or
24 assignable.

25 e. The licensee shall submit a biennial fee to register locations in
26 the State. The fee shall be established by the commissioner by
27 regulation in an amount which is not less than \$25 per location in the
28 State but which shall not to exceed a maximum amount of \$5,000 for
29 all locations.

30 f. Within 45 days after the end of each calendar quarter, each
31 licensee shall file with the commissioner in writing a list of all locations
32 within the State that have been added or terminated by the licensee, if
33 any. The list shall include the name and business address of each
34 location.

35 g. If the licensed name or licensed business address is changed, the
36 licensee shall notify the commissioner in writing of the change within
37 10 days.

38

39 10. a. Each licensee, shall make, keep and preserve the following
40 books, accounts and other records for a period of three years:

41 (1) a record of each payment instrument sold;

42 (2) a general ledger containing all assets, liabilities, capital, income
43 and expense accounts (which general ledger shall be posted at least
44 monthly);

45 (3) settlement sheets received from authorized delegates;

46 (4) bank statements and bank reconciliation records;

1 (5) records of outstanding payment instruments;

2 (6) records of each payment instrument paid within the three year
3 period;

4 (7) a list of names and addresses of all of the licensee's authorized
5 delegates;

6 (8) a list of all countries to which money is transmitted or from
7 which money is received for transmission;

8 (9) a list of the names and addresses of all clearing banks through
9 which the licensee's money transmission business is conducted.

10 (10) such other books and records as the commissioner may
11 require by regulation.

12 b. Maintenance of the documents required by this section in a
13 photographic, electronic or other similar form shall constitute
14 compliance with this section.

15 c. Each licensee shall maintain the records it is required to
16 maintain pursuant to 31 C.F.R. s.103.11 et seq.

17 d. The records of the licensee regarding business regulated under
18 this act shall be maintained at its principal place of business or, with
19 notice to the commissioner, at another location designated by the
20 licensee. If the records are maintained outside this State, the
21 commissioner may require that the licensee reimburse the department
22 for the travel costs incurred in the examination or investigation of
23 those records or may require that the licensee make those records
24 available to the commissioner at the commissioner's office not more
25 than seven business days after demand. The commissioner may further
26 require that those records be accompanied by an individual who will
27 be available to answer questions regarding those records and the
28 business regulated under this act. The commissioner may require the
29 appearance of a specific individual, or request that the licensee
30 designate an individual with knowledge of the records and the
31 business.

32
33 11. a. The commissioner may investigate and examine any
34 licensee or other person the commissioner deems necessary to
35 determine compliance with this act and the orders, rules and
36 regulations issued hereunder. For these purposes, the commissioner
37 may examine the books, accounts, records, and other documents or
38 matters of any licensee or other person. The commissioner shall have
39 the power to compel by subpoena the production of all relevant books,
40 records and other documents and materials relative to an examination
41 or investigation. The cost of the investigations and examinations shall
42 be borne by the licensee.

43 b. Examinations and investigations conducted under the provisions
44 of this section shall be confidential except as required in the
45 administration, enforcement and prosecution of violations under this
46 act, or pursuant to a court order made upon notice to the

1 commissioner and after affording the commissioner an opportunity to
2 advise the court of reasons for excluding that evidence. The court shall
3 order the issuance of a subpoena for the production or admission into
4 evidence of any report or portion thereof, only if it is satisfied that: (1)
5 it is material and relevant to the issues in the proceedings; and (2) the
6 ends of justice and public advantage will be served thereby. If any
7 person refuses to obey a subpoena, or to give testimony or produce
8 evidence as required thereby, the commissioner may apply ex parte to
9 any court having jurisdiction over that person for an order compelling
10 the appearance of the witness before the commissioner to give
11 testimony or to produce evidence as required thereby, or both. The
12 commissioner, in lieu of an on-site examination, may establish by
13 regulation other reports which will be deemed acceptable and which
14 will be considered for all purposes an official report of the
15 commissioner.

16 c. The commissioner may request additional financial data from a
17 licensee or conduct an on-site examination or investigation of any
18 authorized delegate or location of a licensee within this State without
19 prior notice to the authorized delegate or licensee if the commissioner
20 has a reasonable basis to believe that the licensee or authorized
21 delegate is not in compliance with this act. Whenever the
22 commissioner examines or investigates an authorized delegate's
23 operations, the authorized delegate shall pay the costs of that
24 examination or investigation, but the licensee shall remain liable for
25 ensuring that the payment is made. Whenever the commissioner
26 examines or investigates a licensee's location within the State, the
27 licensee shall pay all reasonably incurred costs of that examination.

28

29 12. a. Each licensee shall file with the commissioner on or before
30 April 1 of each year an annual report containing the information
31 required by the commissioner by regulation, along with a fee in an
32 amount set by the commissioner by regulation not to exceed \$200.

33 b. The commissioner may require reports of any licensee or
34 authorized delegate, under penalty of perjury or otherwise, concerning
35 the licensee's or authorized delegate's business conducted pursuant to
36 the license issued under this act, as the commissioner requires for the
37 enforcement of this act.

38 c. A licensee who fails to file any report required by this section
39 on or before the day designated for making the report, or fails to
40 include any prescribed matter in the report, shall pay a penalty of \$100
41 for each day that the report is delayed or incomplete, unless the
42 commissioner, for good cause shown, reduces the amount to be paid,
43 or unless the time to file the report is extended in writing by the
44 commissioner. The penalty may be recovered in a summary
45 proceeding under the "penalty enforcement law," N.J.S.2A:58-1 et
46 seq.

1 d. The licensee shall include in its annual report:

2 (1) ¹except as provided pursuant to subparagraph (b) of this
3 paragraph (1), for a person licensed to engage only in the business of
4 a foreign money transmitter,¹ a copy of its most recent audited
5 consolidated annual financial statement, including balance sheet,
6 statement of income or loss, statement of changes in shareholder's
7 equity and statement of changes in financial position, or, in the case of
8 a licensee that is a wholly owned subsidiary of another corporation,
9 the consolidated audited annual financial statement of the parent
10 corporation may be filed in lieu of the licensee's audited annual
11 financial statement;

12 ¹(b) for a person licensed to engage only in the business of a
13 foreign money transmitter, a copy of its most recent compiled annual
14 financial statement, including balance sheet, statement of income or
15 loss, statement of changes in shareholder's equity and statement of
16 changes in financial position, except that the commissioner may, for
17 good cause, request a foreign money transmitter to submit an audited
18 financial statement;¹

19 (2) for the most recent quarter for which data is available prior
20 to the date of the filing of the annual report, but in no event more than
21 120 days prior to the annual report filing date, the licensee shall
22 provide the number of payment instruments sold by the licensee in the
23 State, the dollar amount of those instruments and the dollar amount of
24 those instruments currently outstanding;

25 (3) any material changes to any of the information submitted by
26 the licensee on its original application which have not previously been
27 reported to the commissioner on any other report required to be filed
28 under this act;

29 (4) a list of the licensee's permissible investments;

30 (5) a list of the locations within this State at which business
31 regulated by this act is being conducted by either the licensee or its
32 authorized delegate; and

33 (6) such other information as the commissioner may require by
34 regulation.

35

36 13. Within 15 days of the occurrence of any one of the events
37 listed below, a licensee shall file a written report with the
38 commissioner describing the event and its expected impact on the
39 licensee's activities in the State:

40 a. The filing for bankruptcy or reorganization by the licensee;

41 b. The institution of revocation or suspension proceedings against
42 the licensee by any state or governmental authority with regard to the
43 licensees' money transmission activities;

44 c. Any indictment of the licensee or any of its key officers or
45 directors related to money transmission activities and specified as a
46 crime by P.L.1994 c.121 (C.2C:21-23 et seq.);

1 d. Any conviction of the licensee or any of its key officers or
2 directors related to money transmission activities and specified as a
3 crime by P.L.1994 c.121 (C.2C:21-23 et seq.).
4

5 14. a. A person shall not directly or indirectly acquire control of
6 a licensee without the prior written approval of the commissioner. The
7 application for change of control shall be in writing in a form
8 prescribed by the commissioner and shall be accompanied by the
9 information, data and records the commissioner requires by
10 regulation. The application shall be accompanied by a fee in an amount
11 not to exceed \$500 set by the commissioner by regulation.

12 b. The commissioner shall deny the application to acquire control
13 of a licensee if the commissioner finds that the acquisition of control
14 is contrary to law or that disapproval is reasonably necessary to
15 protect the interest of the public. In making that determination, the
16 commissioner shall consider the following:

17 (1) Whether the financial condition of the person that seeks to
18 control the licensee might jeopardize the financial condition of the
19 licensee or the interests of the public in the conduct of the business
20 regulated under this act; and

21 (2) Whether the competence, experience, and integrity of the
22 person who seeks to control the licensee, or the officers, directors and
23 controlling persons of the person who seeks to control the licensee,
24 indicate that it would not be in the interests of the public to permit that
25 person to control the licensee.

26 c. Nothing in this section shall prohibit a person from negotiating
27 or entering into agreements subject to the condition that the
28 acquisition of control will not be effective until approved by the
29 commissioner.

30 d. This section shall not apply to any of the following persons or
31 transactions:

32 (1) A registered dealer who acts as an underwriter or member of
33 a selling group in a public offering of the voting securities of a licensee
34 or controlling person of a licensee;

35 (2) A person who acts as proxy for the sole purpose of voting at
36 a designated meeting of the security holders of a licensee or
37 controlling person of a licensee;

38 (3) A person who acquires control of a licensee or controlling
39 person as a personal representative, custodian, guardian, conservator,
40 trustee or other officer appointed by a court of competent jurisdiction
41 or by operation of law;

42 (4) Purchases of a controlling amount of shares on a national
43 stock exchange of a publicly held licensee, until the licensee has actual
44 notice of that purchase and, within five days, notifies the
45 commissioner; and

46 (5) Any other person or transaction that the commissioner by rule

1 or order exempts in the public interest.

2 e. Before filing an application for approval to acquire control, a
3 person may request in writing a determination from the commissioner
4 as to whether that person will be deemed in control, upon
5 consummation of a proposed transaction. If the commissioner
6 determines in response to that request that the person will not be in
7 control within the meaning of this act, the commissioner shall notify
8 the person that the proposed transaction is not subject to the
9 requirements of this section.

10

11 15. a. Notwithstanding any other provision of law, all information
12 or reports obtained by the department from an applicant, licensee or
13 authorized delegate, whether obtained through reports, applications,
14 examinations, audits, investigations, or otherwise, including, but not
15 limited to: (1) all information contained in or related to examination,
16 investigation, operating, or condition reports prepared by, on behalf
17 of, or for the use of the department; or (2) financial statements,
18 balance sheets, or authorized delegate information, are confidential
19 and may not be disclosed or distributed outside the department by the
20 commissioner or any officer or employee of the department. The
21 commissioner, however, may provide for the release of information to
22 representatives of state or federal agencies and foreign countries
23 having regulatory or supervisory authority over the activities of the
24 licensee or similar licensees if those representatives, upon request of
25 the commissioner, disclose similar information respecting those
26 licensees under their regulation or supervision, or to those
27 representatives who state in writing under oath that they shall maintain
28 the confidentiality of that information.

29 b. The commissioner may:

30 (1) Disclose the fact of filing of applications with the department
31 pursuant to this act, give notice of a hearing, if any, regarding those
32 applications, and announce his action thereon;

33 (2) Disclose final decisions in connection with proceedings for the
34 suspension or revocation of licenses issued pursuant to this act;

35 (3) Prepare and circulate reports reflecting the assets and liabilities
36 of money transmitters in general, including other information
37 considered pertinent to the purpose of each report for general
38 statistical information; and

39 (4) Prepare and circulate reports as provided by law.

40 c. Every official report of the department is prima facie evidence
41 of the facts therein stated in any action or proceeding wherein the
42 commissioner is a party.

43 d. Nothing in this section shall be construed to prevent the
44 disclosure of information that is admissible in evidence in any civil or
45 criminal proceeding brought by or at the request of the commissioner
46 or this State to enforce or prosecute violations of this act or the rules,

1 regulations or orders issued or promulgated pursuant to this act.

2

3 16. After notice and hearing pursuant to the "Administrative
4 Procedure Act" P.L.1968, c.410 (C.52:14B-1 et. seq.), the
5 commissioner may suspend or revoke a licensee's license if the
6 commissioner finds that:

7 a. The licensee has made a material misstatement or suppressed or
8 withheld information on the application for a license or any document
9 required to be filed with the commissioner;

10 b. Any fact or condition exists that, if it had existed at the time
11 when the licensee applied for its license, would have been grounds for
12 denying the application;

13 c. The licensee's net worth has become inadequate and the
14 licensee, after 10 days written notice from the commissioner, fails to
15 take the steps the commissioner deems necessary to remedy the
16 deficiency;

17 d. The licensee knowingly violates any material provision of this
18 act or any rule or order validly promulgated by the commissioner
19 under authority of this act;

20 e. The licensee is conducting its business in an unsafe or unsound
21 manner;

22 f. The licensee is insolvent; for the purposes of this section, a
23 licensee shall be insolvent if: (1) the aggregate of its property at a fair
24 valuation, exclusive of any property which it may have conveyed,
25 transferred, concealed, removed or permitted to be concealed or
26 removed, with intent to defraud, hinder or delay its creditors, is not
27 sufficient in amount to pay its debts; or (2) the licensee is unable, by
28 its available assets or the honest use of credit, to pay its debts as they
29 become due;

30 g. The licensee has suspended payment of its obligations, has
31 made an assignment for the benefit of its creditors, or has admitted in
32 writing its inability to pay its debts as they become due;

33 h. The licensee has applied for an adjudication of bankruptcy,
34 reorganization, arrangement, or other relief under any bankruptcy;

35 i. The licensee refuses to permit the commissioner to make any
36 examination or investigation authorized by this act;

37 j. The licensee willfully fails to make any report required by this
38 act.

39 k. The licensee has willfully violated any provision of 31C.F.R.
40 s.103.11 et seq.; or

41 l. The licensee has willfully violated any provision of P.L.1994,
42 c.121 (C.2C:21-23 et seq.).

43

44 17. Licensees desiring to conduct licensed activities through
45 authorized delegates shall authorize each delegate to operate pursuant
46 to an express written contract, which shall provide that the licensee

1 appoints the person as its delegate with authority to engage in the
2 activities of a money transmitter on behalf of the licensee.

3

4 18. a. An authorized delegate shall not make any fraudulent or
5 false statement or misrepresentation to a licensee or to the
6 commissioner.

7 b. All money transmission or sale or issuance of payment
8 instrument activities conducted by authorized delegates shall be strictly
9 in accordance with the licensee's written procedures to the authorized
10 delegate.

11 c. An authorized delegate shall remit all money owing to the
12 licensee in accordance with the terms of the contract between the
13 licensee and the authorized delegate. The failure of an authorized
14 delegate to remit all money owing to a licensee within the time
15 presented shall result in liability of the authorized delegate to the
16 licensee for three times the licensee's actual damages. The
17 commissioner shall have the discretion to set, by regulation, the
18 maximum remittance time.

19 d. An authorized delegate is deemed to consent to the
20 commissioner's inspection, with or without prior notice to the licensee
21 or authorized delegate, of the books and records of the authorized
22 delegate of the licensee whenever the commissioner has a reasonable
23 basis to believe that the licensee or authorized delegate is not in
24 compliance with this act; and

25 e. An authorized delegate is under a duty to act only as authorized
26 under the contract with the licensee and an authorized delegate who
27 exceeds its authority is subject to cancellation of its contract and
28 further disciplinary action by the commissioner.

29 f. All funds (less fees) received by an authorized delegate of a
30 licensee from the sale or delivery of a payment instrument issued by a
31 licensee or received by an authorized delegate for transmission shall,
32 from the time the funds are received by an authorized delegate until
33 that time when the funds or an equivalent amount are remitted by the
34 authorized delegate to the licensee, constitute trust funds owned by
35 and belonging to the licensee. If an authorized delegate commingles
36 any trust funds with any other funds or property owned or controlled
37 by the authorized delegate, all commingled proceeds and other
38 property shall be impressed with a trust in favor of the licensee in the
39 amount equal to the amount of the proceeds due the licensee.

40 g. An authorized delegate shall report to the licensee the theft or
41 loss of payment instruments within 24 hours from the time it knew or
42 should have known of that theft or loss.

43 h. Authorized delegates shall comply with the provisions of
44 31 C.F.R. s.103.11 et seq. and P.L.1994, c.121 (C.2C:21-23 et seq.).

45 i. Authorized delegates shall conduct all business governed by this
46 act in the name of the licensee.

1 19. a. If, after notice and a hearing, the commissioner finds that
2 any authorized delegate of a licensee or any director, officer,
3 employee, or controlling person of that authorized delegate:

4 (1) has violated any provision of this act or of any rule or
5 regulation or order issued under this act;

6 (2) has engaged or participated in any unsafe or unsound act with
7 respect to the business of selling or issuing payment instruments of the
8 licensee or the business of money transmission; or

9 (3) has made or caused to be made in any application or report
10 filed with the commissioner or in any proceeding before the
11 commissioner, any statement which was at the time and in the
12 circumstances under which it was made, false or misleading with
13 respect to any material fact, or has omitted to state in any such
14 application or report any material fact which is required to be stated
15 therein, the commissioner may issue an order, pursuant to the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.) suspending or barring the authorized delegate from continuing to
18 be or becoming an authorized delegate of any licensee during the
19 period for which the order is in effect. Upon issuance of an order, the
20 licensee shall terminate its relationship with the authorized delegate
21 according to the terms of the order.

22 b. (1) Any authorized delegate to whom an order is issued under
23 this section may apply to the commissioner to modify or rescind the
24 order. The commissioner shall not grant the application unless the
25 commissioner finds that it is in the public interest to do so and that it
26 is reasonable to believe that the person will, if and when the person is
27 permitted to resume being an authorized delegate of a licensee, comply
28 with all applicable provisions of this act and of any regulation and
29 order issued under this act.

30 (2) The right of any authorized delegate to whom an order is
31 issued under this section to petition for judicial review of that order
32 shall not be affected by the failure of that person to apply to the
33 commissioner to modify or rescind the order.
34

35 20. A licensee's responsibility to any person for a money
36 transmission conducted on that person's behalf by the licensee or the
37 licensee's authorized delegate shall be limited to the amount of money
38 transmitted or the face amount of the payment instrument purchased
39 and any fee, commission or other benefit paid to the licensee or the
40 licensee's authorized delegate for that service.
41

42 21. The provisions of the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to any hearing
44 afforded pursuant to this act.
45

46 22. a. If, after notice and hearing, the commissioner finds that a

1 person has violated any provision of this act or a rule adopted under
2 this act, the commissioner may order the person to pay the
3 commissioner a civil penalty in an amount specified by the
4 commissioner, not to exceed \$5,000 for each violation. Each violation
5 shall constitute a separate offense and the penalty under this section
6 shall be in addition to a suspension or revocation of a license. No such
7 proceeding shall be initiated and no penalty shall be assessed pursuant
8 to this section until after that person has been notified in writing of the
9 nature of the violation and has been afforded a reasonable period of
10 time, as set forth in the notice, to correct the violation and has failed
11 to do so. The provisions of the "penalty enforcement law,"
12 N.J.S.2A:58-1 et seq., shall apply.

13 b. The commissioner, in the exercise of the commissioner's
14 reasonable judgment, is authorized to compromise, settle, and collect
15 civil penalties with any person for violations of any provision of this
16 act, or of any rule, regulation or order issued or promulgated pursuant
17 to this act.

18

19 23. a. If it appears to the commissioner that any person has
20 committed or is about to commit a violation of any provision of this
21 act or of any rule or order of the commissioner, the commissioner may
22 apply to the Superior Court for an order enjoining that person from
23 violating or continuing to violate this act or any rule, regulation or
24 order of the commissioner and for injunctive or other relief as the
25 nature of the case may require.

26 b. The commissioner may enter into consent orders at any time
27 with any person to resolve any matter arising under this act. A
28 consent order shall be signed by the person to whom it is issued or a
29 duly authorized representative, and shall indicate agreement to the
30 terms contained therein. A consent order need not constitute an
31 admission by any person that any provision of this act, or any rule,
32 regulation or order promulgated or issued thereunder has been
33 violated, nor need it constitute a finding by the commissioner that the
34 person has violated any provision of this act or any rule, regulation or
35 order promulgated or issued thereunder.

36 c. Notwithstanding the issuance of a consent order, the
37 commissioner may seek civil or criminal penalties or compromise civil
38 penalties concerning matters encompassed by the consent order, unless
39 the consent order by its terms expressly precludes the commissioner
40 from so doing.

41 d. The commissioner is authorized to exchange fingerprint data
42 with and receive criminal history information from the Federal Bureau
43 of Investigation and the New Jersey Division of State Police or any
44 other appropriate agency for use in performing background checks.
45 The commissioner is authorized to conduct additional background
46 checks the commissioner deems appropriate.

1 24. a. Any person who knowingly and willfully violates any
2 provision of this act for which a penalty is not specifically provided is
3 guilty of a crime of the fourth degree.

4 b. Any person who knowingly and willfully makes a material, false
5 statement in any document filed or required to be filed under this act
6 with the intent to deceive the recipient of the document is guilty of a
7 crime of the third degree.

8 c. Any person who knowingly and willfully engages in the business
9 of money transmission without a license as provided herein shall be
10 guilty of a crime of the third degree.

11 d. Any person who purposely or knowingly refuses to permit any
12 lawful investigation by the commissioner or the Attorney General shall
13 be guilty of a crime of the third degree.

14
15 25. The commissioner shall promulgate regulations pursuant to the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
17 necessary to effectuate the provisions of this act.

18
19 26. a. Any licensee, authorized delegate or other person who
20 engages in business activities that are regulated under this act, with
21 or without filing an application, is deemed to have done both of the
22 following:

23 (1) Consented to the jurisdiction of the courts of this State for all
24 actions arising under this act; and

25 (2) Appointed the commissioner as his lawful agent for the
26 purpose of accepting service of process in any action, suit or
27 proceeding that may arise under this act.

28 b. Within three business days after service of process upon the
29 commissioner, the commissioner shall transmit by certified mail copies
30 of all lawful process accepted by the commissioner as an agent to that
31 person at its last known address. Service of process shall be
32 considered complete three business days after the commissioner
33 deposits copies of the documents in the United States mail.

34
35 27. ¹a. ¹ Every person engaged in activities within this State
36 encompassed by this act on the effective date of this act, except those
37 persons already licensed under chapter 15 of Title 17 of the Revised
38 Statutes or P.L.1964, c.273 (C.17:15B-1 et seq.), shall file an
39 application in accordance with the provisions of this act ¹**[within]** by
40 the first business day following¹ 90 days after the ¹effective¹ date this
41 act ¹**[becomes operative]**¹.

42 ¹b. ¹ A person ¹**[licensed]** holding a license in good standing¹
43 under chapter 15 of Title 17 of the Revised Statutes ¹**[or P.L.1964,**
44 **c.273 (C.17:15B-1 et seq.),]**¹ shall continue as a licensee under this
45 act until ¹**[April 1, 1998, at which time, if]** the first business day
46 following 90 days after the effective date of this act. ¹**If** the licensee

1 intends to continue to engage ¹only¹ in ¹【activities】 the business of a
2 foreign money transmitter¹ regulated by this act, the licensee shall
3 ¹【renew the license as a licensee under the provisions of this act no
4 later than April 1, 1998.】 , by the first business day following 90 days
5 after the effective date of this act, submit to the commissioner a
6 written statement certified to be true under penalty of law that the
7 licensee is in full compliance with the provisions of this act; this
8 statement shall include the information required by sections 5, 6 and
9 8 of this act. Upon submission of the aforementioned statement under
10 oath, a licensee's current license shall continue in accordance with the
11 provisions of this act.

12 c. A person holding a license in good standing under chapter 15
13 of Title 17 of the Revised Statutes or P.L.1964, c.273 (C.17:15B-1 et
14 seq. or both, who wishes to continue as a licensee under this act, shall,
15 by the first business day following 90 days after the effective date of
16 this act, submit to the commissioner a written statement certified to be
17 true under penalty of law that the licensee is in full compliance with
18 the provisions of this act; this statement shall include the information
19 required by sections 5, 6 and 8 of this act. Upon submission of the
20 aforementioned statement under oath, a licensee's current license shall
21 continue in accordance with the provisions of this act.¹

22

23 28. The following are repealed:
24 R.S.17:15-1 through R.S.17:15-10 and
25 P.L.1964, c.273 (C.17:15B-1 et seq.).
26

27 29. Section 25 of this act shall take effect immediately and the
28 remainder of this act shall take effect on ¹【January 1, 1998】 the first
29 business day following 90 days after enactment¹.

ASSEMBLY, No. 956

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman ALAN M. AUGUSTINE

District 22 (Middlesex, Morris, Somerset and Union)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Provides for the licensing and regulation of money transmitters.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning money transmitters, supplementing Title 17 of the
2 Revised Statutes and repealing chapter 15 of Title 17 of the
3 Revised Statutes and P.L.1964, c.273.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "New Jersey
9 Money Transmitters Act."

10

11 2. As used in this act:

12 "Applicant" means a person filing an application for a license under
13 this act.

14 "Authorized delegate" means an entity authorized by the licensee
15 pursuant to the provisions of section 17 of this act to sell or issue
16 payment instruments or engage in the business of transmitting money
17 on behalf of a licensee.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Control" means ownership of, or the power to vote, 25 percent or
21 more of the outstanding voting securities of a licensee or controlling
22 person. For purposes of determining the percentage of a licensee
23 controlled by any person, there shall be aggregated with the person's
24 interest the interest of any other person controlled by that person or
25 by any spouse, parent, or child of that person.

26 "Controlling person" means any person in control of a licensee.

27 "Department" means the Department of Banking and Insurance.

28 "Executive officer," means the licensee's president, chairman of the
29 executive committee, senior officer responsible for the licensee's
30 business in this State, chief financial officer and any other person who
31 performs similar functions.

32 "Key shareholder" means any person, or group of persons acting in
33 concert, who is the owner of 25 percent or more of any voting class
34 of an applicant's stock.

35 "Licensee" means a person licensed under this act.

36 "Location" means a place of business at which activities regulated
37 by this act occur.

38 "Material litigation" means any litigation that, according to
39 generally accepted accounting principles, is deemed significant to any
40 applicant's or licensee's financial health and would be required to be
41 referenced in that entity's annual audited financial statements, report
42 to shareholders or similar documents.

43 "Money" means a medium of exchange authorized or adopted by
44 the United States or a foreign government as a part of its currency and
45 that is customarily used and accepted as a medium of exchange in the
46 country of issuance.

1 "Money transmitter" means a person who engages in this State in
2 the business of:

3 (1) the sale or issuance of payment instruments for a fee,
4 commission or other benefit;

5 (2) the receipt of money for transmission or transmitting money
6 within the United States or to locations abroad by any and all means,
7 including but not limited to payment instrument, wire, facsimile,
8 electronic transfer, or otherwise for a fee, commission or other benefit;
9 or

10 (3) the receipt of money for obligors for the purpose of paying
11 obligors' bills, invoices or accounts for a fee, commission or other
12 benefit paid by the obligor.

13 "Outstanding payment instrument" means any payment instrument
14 issued by the licensee which has been sold in the United States directly
15 by the licensee or any payment instrument issued by the licensee which
16 has been sold by an authorized delegate of the licensee in the United
17 States, which has been reported to the licensee as having been sold,
18 and which has not yet been paid by or for the licensee.

19 "Payment instrument" means any check, draft, money order,
20 travelers check or other instrument or written order for the
21 transmission or payment of money, sold or issued to one or more
22 persons, whether or not the instrument is negotiable. The term
23 "payment instrument" does not include any credit card voucher, any
24 letter of credit or any instrument which is redeemable by the issuer in
25 goods or services.

26 "Permissible investments" means:

27 (1) cash;

28 (2) certificates of deposit or other debt obligations of a bank,
29 savings bank, savings and loan association, or credit union, either
30 domestic or foreign;

31 (3) bills of exchange or time drafts drawn on and accepted by a
32 commercial bank, otherwise known as bankers' acceptances, which are
33 eligible for purchase by member banks of the Federal Reserve System;

34 (4) any investment which is rated in one of the three highest rating
35 categories by a nationally recognized statistical rating organization;

36 (5) investment securities that are obligations of the United States,
37 its agencies or instrumentalities, or obligations that are guaranteed
38 fully as to principal and interest by the United States, or any
39 obligations of any state, municipality or any political subdivision
40 thereof which is rated in one of the three highest rating categories by
41 a nationally recognized statistical rating organization;

42 (6) shares in a money market mutual fund, interest-bearing bills,
43 notes or bonds, debentures or stock traded on any national securities
44 exchange or on a national over-the-counter market, or mutual funds
45 primarily composed of those securities or a fund composed of one or
46 more permissible investments as set forth in this section;

1 (7) demand borrowing agreements made to a corporation or a
2 subsidiary of a corporation whose capital stock is listed on a national
3 exchange;

4 (8) receivables which are due to a licensee from its authorized
5 delegates pursuant to a contract described in section 17 of this act,
6 which are not past due or doubtful of collection; or

7 (9) any other investments or security device which the
8 commissioner may authorize by rule.

9
10 3. a. This act shall not apply to:

11 (1) The United States or any department, agency, or
12 instrumentality thereof;

13 (2) The United States Postal Service;

14 (3) The State or any political subdivision thereof;

15 (4) Banks, bank holding companies, credit unions, building and
16 loan associations, savings and loan associations, savings banks or
17 mutual banks organized under the laws of any state or the United
18 States, provided that they do not issue or sell payment instruments
19 through authorized delegates who are not banks, bank holding
20 companies, credit unions, building and loan associations, savings and
21 loan associations, savings banks or mutual banks;

22 (5) The provision of electronic transfer of government benefits for
23 any federal, state or county agency as defined in Regulation E,
24 12 C.F.R.§205.1 et seq., by a contractor for and on behalf of the
25 United States or any department, agency or instrumentality thereof, or
26 any state or political subdivision thereof; and

27 (6) A person licensed to conduct business as a debt adjuster
28 pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.), when acting within
29 the scope of activities regulated by that license.

30 b. Authorized delegates of a licensee, acting within the scope of
31 authority conferred by a written contract as described in section 17 of
32 this act shall not be required to obtain a license pursuant to this act.

33
34 4. a. No person, other than a person exempt from the provisions
35 of this act pursuant to section 3, shall engage in the business of money
36 transmission without a license as provided in this act.

37 b. A licensee may conduct its business in this State at one or more
38 locations, directly or indirectly owned, or through one or more
39 authorized delegates, or both, pursuant to the single license granted to
40 the licensee under this act.

41
42 5. a. Each licensee shall at all times have a net worth of not less
43 than \$100,000, calculated in accordance with generally accepted
44 accounting principles. Licensees engaging in money transmission at
45 more than one location or through authorized delegates shall have an
46 additional net worth of \$25,000 per location or agent located in this

1 State, as applicable, up to a maximum net worth amount of
2 \$1,000,000.

3 b. Every corporate applicant, at the time of filing an application
4 and at all times after a license is issued, shall be in good standing in the
5 state of its incorporation. All non-corporate applicants shall, at the
6 time of the filing of an application and at all times after a license is
7 issued, be registered or qualified to do business in this State.

8

9 6. a. Each licensee shall at all times possess permissible
10 investments having an aggregate market value, calculated in
11 accordance with generally accepted accounting principles, of not less
12 than the aggregate face amount of all outstanding payment instruments
13 issued or sold by the licensee in the United States. This requirement
14 may be waived by the commissioner if the dollar volume of a licensee's
15 outstanding payment instruments does not exceed the bond or other
16 security devices posted by the licensee pursuant to section 8 of this
17 act.

18 b. In the event of bankruptcy of the licensee, permissible
19 investments, even if commingled with other assets of the licensee, shall
20 be deemed to be held in trust for the benefit of the purchasers and
21 holders of the licensee's outstanding payment instruments by operation
22 of law.

23

24 7. Each application for a license shall be made in writing, under
25 oath, and in a form prescribed by the commissioner. Each application
26 shall contain:

27 a. For all applicants:

28 (1) The exact name of the applicant, the applicant's principal
29 address, any fictitious or trade name used by the applicant in the
30 conduct of its business and the location of the applicant's business
31 records;

32 (2) The history, if any, of the applicant's material litigation and
33 criminal convictions for the five year period prior to the date of the
34 application;

35 (3) A description of the activities conducted by the applicant and
36 a history of operations;

37 (4) A description of the business activities in which the applicant
38 seeks to be engaged in the State;

39 (5) A list identifying the applicant's proposed authorized delegates
40 in the State, if any, at the time of the filing of the license application;

41 (6) A sample authorized delegate contract, if applicable;

42 (7) A sample form of payment instrument, if applicable;

43 (8) Each location at which the applicant and its authorized
44 delegates, if any, propose to conduct the licensed activities in the
45 State;

46 (9) The name and address of each clearing bank on which the

1 applicant's payment instruments will be drawn or through which those
2 payment instruments will be payable;

3 (10) A list identifying each country to which an applicant proposes
4 to transmit money or from which an applicant proposes to receive
5 money transmissions;

6 (11) Federal tax identification number; and

7 (12) Non-refundable application fee as prescribed by regulation by
8 the commissioner in an amount not to exceed \$1,000.

9 b. If the applicant is a corporation, the applicant shall also provide:

10 (1) The date of the applicant's incorporation and state of
11 incorporation;

12 (2) A certificate of good standing from the state in which the
13 applicant was incorporated;

14 (3) A description of the corporate structure of the applicant,
15 including the identity of any parent or subsidiary of the applicant, and
16 the disclosure of whether any parent or subsidiary is publicly traded on
17 any stock exchange;

18 (4) The name, business and residence address, social security
19 number, date of birth and employment history for the past five years
20 of each of the applicant's executive officers and of each officer or
21 manager who will be in charge of the applicant's activities to be
22 licensed under this act;

23 (5) The name, business and residence address, social security
24 number, date of birth and employment history for the period five years
25 prior to the date of the application of each key shareholder of the
26 applicant;

27 (6) The history, if any, of material litigation and criminal
28 convictions for the five year period prior to the date of the application
29 of every executive officer or key shareholder of the applicant;

30 (7) A copy of the applicant's most recent audited financial
31 statements (including balance sheet, statement of income or loss,
32 statement of changes in shareholder equity and statement of changes
33 in financial position) prepared by a certified public accountant or
34 public accountant in good standing and, if available, the applicant's
35 audited financial statements for the immediately preceding three year
36 period. However, if the applicant is a wholly owned subsidiary of
37 another corporation, the applicant may submit either the parent
38 corporation's consolidated audited financial statements for the current
39 year and for the immediately preceding three year period or the parent
40 corporation's Form 10-K reports filed with the Securities and
41 Exchange Commission for the prior three years in lieu of the
42 applicant's financial statements. If the applicant is a wholly owned
43 subsidiary of a corporation having its principal place of business
44 outside the United States, similar documentation filed with the parent
45 corporation's non-United States regulator may be submitted to satisfy
46 this provision;

1 (8) Copies of all filings, if any, made by the applicant with the
2 Securities and Exchange Commission, or with a similar regulator in a
3 country other than the United States, within the year preceding the
4 date of filing of the application; and

5 (9) Except in the case of a publicly traded corporation, its
6 subsidiaries and affiliates, or a bank, bank holding company,
7 subsidiaries and affiliates thereof, fingerprints of each of the applicant's
8 executive officers and of each officer or manager who will be in charge
9 of the applicant's activities to be licensed hereunder.

10 c. If the applicant is not a corporation, the applicant shall also
11 provide:

12 (1) The name, business and residence address, personal financial
13 statement and employment history for the past five years, social
14 security number, date of birth, and fingerprints of each principal of the
15 applicant and the name, business and residence address, employment
16 history for the past five years, social security number, date of birth,
17 and fingerprints of any other persons who will be in charge of the
18 applicant's activities to be licensed under this act;

19 (2) The place and date of the applicant's registration or
20 qualification to do business in this State;

21 (3) The history, if any, of material litigation and criminal
22 convictions for the five year period prior to the date of the application
23 for each individual having any ownership interest in the applicant and
24 each individual who exercises supervisory responsibility with respect
25 to the applicant's activities; and

26 (4) Copies of the applicant's audited financial statements (including
27 balance sheet, statement of income or loss, and statement of changes
28 in financial position) prepared by a certified public accountant or
29 public accountant in good standing for the current year and, if
30 available, for the immediately preceding two year period; and

31 (5) Alien registration information, if applicable.

32 d. Such other information as the commissioner may require by
33 regulation.

34
35 8. a. Each application must be accompanied by a surety bond,
36 irrevocable letter of credit or such other similar security device
37 (hereinafter "security device") acceptable to the commissioner in an
38 amount prescribed by the commissioner by regulation of not less than
39 \$100,000 and not more than \$1,000,000. The security device shall be
40 in a form satisfactory to the commissioner and shall run to the State
41 for the benefit of any person injured by a wrongful act, default, fraud
42 or misrepresentation of the licensee, including its directors, officers,
43 authorized delegates and employees, to secure the faithful performance
44 of the obligations of the licensee with respect to the receipt, handling,
45 transmission, and payment of money in connection with the sale and
46 issuance of payment instruments, transmission of money, or both. In

1 the case of a bond, the bond shall be obtained from a surety company
2 authorized to do business in this State and the aggregate liability of the
3 surety in no event shall exceed the principal sum of the bond.

4 b. In lieu of the security device or of any portion of the principal
5 thereof, as required by this section, the licensee may deposit with the
6 commissioner, or with banks in this State that the licensee designates
7 and the commissioner approves, cash, interest-bearing stocks and
8 bonds, notes, debentures or other obligations of the United States or
9 any agency or instrumentality thereof, or guaranteed by the United
10 States, or of this State, or of a political subdivision or instrumentality
11 of this State, or guaranteed by this State which is rated in one of the
12 three highest categories by a nationally recognized statistical rating
13 organization, to an aggregate amount, based upon principal amount
14 or market value, whichever is lower, of not less than the amount of the
15 security device or portion thereof. The securities, cash, or both, shall
16 be deposited as aforesaid and held to secure the same obligations as
17 the security device, but the depositor shall be entitled to receive all
18 interest and dividends thereon, shall have the right, with the approval
19 of the commissioner, to substitute other securities for those deposited,
20 and shall be required to do so on written order of the commissioner for
21 good cause shown.

22 c. The security device shall remain in effect until cancellation,
23 which may occur only after thirty days' written notice to the
24 commissioner. Cancellation shall not affect any liability incurred or
25 accrued during that period.

26 d. The security device shall remain in place for no longer than five
27 years after the licensee ceases money transmission operations in the
28 State. However, notwithstanding this provision, the commissioner
29 may permit the security device to be reduced or eliminated prior to
30 that time to the extent that the amount of the licensee's payment
31 instruments outstanding in this State are reduced. The commissioner
32 may also permit a licensee to substitute a letter of credit or other form
33 of security device acceptable to the commissioner for the security
34 device in place at the time the licensee ceases money transmission
35 operations in the State by surrender, revocation or expiration of its
36 license.

37
38 9. a. Upon the filing of a complete application, in the case of an
39 initial application, or the filing of a complete biennial renewal
40 application, the commissioner shall investigate the financial condition
41 and responsibility, financial and business experience, character and
42 general fitness of the applicant for an initial license or a renewal
43 license. The commissioner may conduct an on-site investigation of the
44 applicant for an initial license, the reasonable cost of which shall be
45 borne by the applicant. If the commissioner finds that the applicant's
46 business will be conducted honestly, fairly and in a manner

1 commanding the confidence and trust of the community and that the
2 applicant has fulfilled the requirements imposed by this act and has
3 paid the required license fee, the commissioner shall issue a license to
4 the applicant authorizing the applicant to engage in the licensed
5 activities in this State. If these requirements have not been met, the
6 commissioner shall deny the application in writing, setting forth the
7 reasons for the denial.

8 b. The commissioner shall approve or deny every application for an
9 initial license within 120 days from the date that the applicant has
10 satisfied all requirements for licensure.

11 c. The license fee for each two-year period, or any part thereof,
12 shall be in an amount prescribed by the commissioner by rule or
13 regulation, not to exceed \$4,000. The two-year license period shall be
14 set by the commissioner by rule or regulation. A license shall run from
15 the date of issuance to the end of the biennial period. If the initial
16 license is issued in the second year of the biennial licensing period, the
17 license fee shall be in an amount not to exceed \$2,000.

18 d. Each license issued pursuant to this act shall expire at the end of
19 the biennial licensing period. Licenses shall not be transferable or
20 assignable.

21 e. The licensee shall submit a biennial fee to register locations in
22 the State. The fee shall be established by the commissioner by
23 regulation in an amount which is not less than \$25 per location in the
24 State but which shall not to exceed a maximum amount of \$5,000 for
25 all locations.

26 f. Within 45 days after the end of each calendar quarter, each
27 licensee shall file with the commissioner in writing a list of all locations
28 within the State that have been added or terminated by the licensee, if
29 any. The list shall include the name and business address of each
30 location.

31 g. If the licensed name or licensed business address is changed, the
32 licensee shall notify the commissioner in writing of the change within
33 10 days.

34

35 10. a. Each licensee, shall make, keep and preserve the following
36 books, accounts and other records for a period of three years:

37 (1) a record of each payment instrument sold;

38 (2) a general ledger containing all assets, liabilities, capital, income
39 and expense accounts (which general ledger shall be posted at least
40 monthly);

41 (3) settlement sheets received from authorized delegates;

42 (4) bank statements and bank reconciliation records;

43 (5) records of outstanding payment instruments;

44 (6) records of each payment instrument paid within the three year
45 period;

46 (7) a list of names and addresses of all of the licensee's authorized

1 delegates;

2 (8) a list of all countries to which money is transmitted or from
3 which money is received for transmission;

4 (9) a list of the names and addresses of all clearing banks through
5 which the licensee's money transmission business is conducted.

6 (10) such other books and records as the commissioner may
7 require by regulation.

8 b. Maintenance of the documents required by this section in a
9 photographic, electronic or other similar form shall constitute
10 compliance with this section.

11 c. Each licensee shall maintain the records it is required to maintain
12 pursuant to 31 C.F.R. §103.11 et seq..

13 d. The records of the licensee regarding business regulated under
14 this act shall be maintained at its principal place of business or, with
15 notice to the commissioner, at another location designated by the
16 licensee. If the records are maintained outside this State, the
17 commissioner may require that the licensee reimburse the department
18 for the travel costs incurred in the examination or investigation of
19 those records or may require that the licensee make those records
20 available to the commissioner at the commissioner's office not more
21 than seven business days after demand. The commissioner may further
22 require that those records be accompanied by an individual who will
23 be available to answer questions regarding those records and the
24 business regulated under this act. The commissioner may require the
25 appearance of a specific individual, or request that the licensee
26 designate an individual with knowledge of the records and the
27 business.

28

29 11. a. The commissioner may investigate and examine any licensee
30 or other person the commissioner deems necessary to determine
31 compliance with this act and the orders, rules and regulations issued
32 hereunder. For these purposes, the commissioner may examine the
33 books, accounts, records, and other documents or matters of any
34 licensee or other person. The commissioner shall have the power to
35 compel by subpoena the production of all relevant books, records and
36 other documents and materials relative to an examination or
37 investigation. The cost of the investigations and examinations shall be
38 borne by the licensee.

39 b. Examinations and investigations conducted under the provisions
40 of this section shall be confidential except as required in the
41 administration, enforcement and prosecution of violations under this
42 act, or pursuant to a court order made upon notice to the
43 commissioner and after affording the commissioner an opportunity to
44 advise the court of reasons for excluding that evidence. The court shall
45 order the issuance of a subpoena for the production or admission into
46 evidence of any report or portion thereof, only if it is satisfied that: (1)

1 it is material and relevant to the issues in the proceedings; and (2) the
2 ends of justice and public advantage will be served thereby. If any
3 person refuses to obey a subpoena, or to give testimony or produce
4 evidence as required thereby, the commissioner may apply ex parte to
5 any court having jurisdiction over that person for an order compelling
6 the appearance of the witness before the commissioner to give
7 testimony or to produce evidence as required thereby, or both. The
8 commissioner, in lieu of an on-site examination, may establish by
9 regulation other reports which will be deemed acceptable and which
10 will be considered for all purposes an official report of the
11 commissioner.

12 c. The commissioner may request additional financial data from a
13 licensee or conduct an on-site examination or investigation of any
14 authorized delegate or location of a licensee within this State without
15 prior notice to the authorized delegate or licensee if the commissioner
16 has a reasonable basis to believe that the licensee or authorized
17 delegate is not in compliance with this act. Whenever the
18 commissioner examines or investigates an authorized delegate's
19 operations, the authorized delegate shall pay the costs of that
20 examination or investigation, but the licensee shall remain liable for
21 ensuring that the payment is made. Whenever the commissioner
22 examines or investigates a licensee's location within the State, the
23 licensee shall pay all reasonably incurred costs of that examination.
24

25 12. a. Each licensee shall file with the commissioner on or before
26 April 1 of each year an annual report containing the information
27 required by the commissioner by regulation, along with a fee in an
28 amount set by the commissioner by regulation not to exceed \$200.

29 b. The commissioner may require reports of any licensee or
30 authorized delegate, under penalty of perjury or otherwise, concerning
31 the licensee's or authorized delegate's business conducted pursuant to
32 the license issued under this act, as the commissioner requires for the
33 enforcement of this act.

34 c. A licensee who fails to file any report required by this section on
35 or before the day designated for making the report, or fails to include
36 any prescribed matter in the report, shall pay a penalty of \$100 for
37 each day that the report is delayed or incomplete, unless the
38 commissioner, for good cause shown, reduces the amount to be paid,
39 or unless the time to file the report is extended in writing by the
40 commissioner. The penalty may be recovered in a summary
41 proceeding under the "penalty enforcement law" (N.J.S.2A:58-1 et
42 seq.).

43 d. The licensee shall include in its annual report:

44 (1) a copy of its most recent audited consolidated annual financial
45 statement, including balance sheet, statement of income or loss,
46 statement of changes in shareholder's equity and statement of changes

1 in financial position, or, in the case of a licensee that is a wholly
2 owned subsidiary of another corporation, the consolidated audited
3 annual financial statement of the parent corporation may be filed in
4 lieu of the licensee's audited annual financial statement;

5 (2) for the most recent quarter for which data is available prior
6 to the date of the filing of the annual report, but in no event more than
7 120 days prior to the annual report filing date, the licensee shall
8 provide the number of payment instruments sold by the licensee in the
9 State, the dollar amount of those instruments and the dollar amount of
10 those instruments currently outstanding;

11 (3) any material changes to any of the information submitted by the
12 licensee on its original application which have not previously been
13 reported to the commissioner on any other report required to be filed
14 under this act;

15 (4) a list of the licensee's permissible investments;

16 (5) a list of the locations within this State at which business
17 regulated by this act is being conducted by either the licensee or its
18 authorized delegate; and

19 (6) such other information as the commissioner may require by
20 regulation.

21

22 13. Within 15 days of the occurrence of any one of the events
23 listed below, a licensee shall file a written report with the
24 commissioner describing the event and its expected impact on the
25 licensee's activities in the State:

26 a. The filing for bankruptcy or reorganization by the licensee;

27 b. The institution of revocation or suspension proceedings against
28 the licensee by any state or governmental authority with regard to the
29 licensees' money transmission activities;

30 c. Any indictment of the licensee or any of its key officers or
31 directors related to money transmission activities and specified as a
32 crime by P.L.1994 c.121 (C.2C:21-23 et seq.);

33 d. Any conviction of the licensee or any of its key officers or
34 directors related to money transmission activities and specified as a
35 crime by P.L.1994 c.121 (C.2C:21-23 et seq.).

36

37 14. a. A person shall not directly or indirectly acquire control of
38 a licensee without the prior written approval of the commissioner. The
39 application for change of control shall be in writing in a form
40 prescribed by the commissioner and shall be accompanied by the
41 information, data and records the commissioner requires by
42 regulation. The application shall be accompanied by a fee in an amount
43 not to exceed \$500 set by the commissioner by regulation.

44 b. The commissioner shall deny the application to acquire control
45 of a licensee if the commissioner finds that the acquisition of control
46 is contrary to law or that disapproval is reasonably necessary to

1 protect the interest of the public. In making that determination, the
2 commissioner shall consider the following:

3 (1) Whether the financial condition of the person that seeks to
4 control the licensee might jeopardize the financial condition of the
5 licensee or the interests of the public in the conduct of the business
6 regulated under this act; and

7 (2) Whether the competence, experience, and integrity of the
8 person who seeks to control the licensee, or the officers, directors and
9 controlling persons of the person who seeks to control the licensee,
10 indicate that it would not be in the interests of the public to permit that
11 person to control the licensee.

12 c. Nothing in this section shall prohibit a person from negotiating
13 or entering into agreements subject to the condition that the
14 acquisition of control will not be effective until approved by the
15 commissioner.

16 d. This section shall not apply to any of the following persons or
17 transactions:

18 (1) A registered dealer who acts as an underwriter or member of
19 a selling group in a public offering of the voting securities of a licensee
20 or controlling person of a licensee;

21 (2) A person who acts as proxy for the sole purpose of voting at
22 a designated meeting of the security holders of a licensee or
23 controlling person of a licensee;

24 (3) A person who acquires control of a licensee or controlling
25 person as a personal representative, custodian, guardian, conservator,
26 trustee or other officer appointed by a court of competent jurisdiction
27 or by operation of law;

28 (4) Purchases of a controlling amount of shares on a national stock
29 exchange of a publicly held licensee, until the licensee has actual notice
30 of that purchase and, within five days, notifies the commissioner; and

31 (5) Any other person or transaction that the commissioner by rule
32 or order exempts in the public interest.

33 e. Before filing an application for approval to acquire control, a
34 person may request in writing a determination from the commissioner
35 as to whether that person will be deemed in control, upon
36 consummation of a proposed transaction. If the commissioner
37 determines in response to that request that the person will not be in
38 control within the meaning of this act, the commissioner shall notify
39 the person that the proposed transaction is not subject to the
40 requirements of this section.

41

42 15. a. Notwithstanding any other provision of law, all information
43 or reports obtained by the department from an applicant, licensee or
44 authorized delegate, whether obtained through reports, applications,
45 examinations, audits, investigations, or otherwise, including, but not
46 limited to: (1) all information contained in or related to examination,

1 investigation, operating, or condition reports prepared by, on behalf
2 of, or for the use of the department; or (2) financial statements,
3 balance sheets, or authorized delegate information, are confidential
4 and may not be disclosed or distributed outside the department by the
5 commissioner or any officer or employee of the department. The
6 commissioner, however, may provide for the release of information to
7 representatives of state or federal agencies and foreign countries
8 having regulatory or supervisory authority over the activities of the
9 licensee or similar licensees if those representatives, upon request of
10 the commissioner, disclose similar information respecting those
11 licensees under their regulation or supervision, or to those
12 representatives who state in writing under oath that they shall maintain
13 the confidentiality of that information.

14 b. The commissioner may:

15 (1) Disclose the fact of filing of applications with the department
16 pursuant to this act, give notice of a hearing, if any, regarding those
17 applications, and announce his action thereon;

18 (2) Disclose final decisions in connection with proceedings for the
19 suspension or revocation of licenses issued pursuant to this act;

20 (3) Prepare and circulate reports reflecting the assets and liabilities
21 of money transmitters in general, including other information
22 considered pertinent to the purpose of each report for general
23 statistical information; and

24 (4) Prepare and circulate reports as provided by law.

25 c. Every official report of the department is prima facie evidence
26 of the facts therein stated in any action or proceeding wherein the
27 commissioner is a party.

28 d. Nothing in this section shall be construed to prevent the
29 disclosure of information that is admissible in evidence in any civil or
30 criminal proceeding brought by or at the request of the commissioner
31 or this State to enforce or prosecute violations of this act or the rules,
32 regulations or orders issued or promulgated pursuant to this act.

33

34 16. After notice and hearing pursuant to the "Administrative
35 Procedure Act" P.L.1968, c.410 (c.52:14B-1 et. seq.), the
36 commissioner may suspend or revoke a licensee's license if the
37 commissioner finds that:

38 a. The licensee has made a material misstatement or suppressed or
39 withheld information on the application for a license or any document
40 required to be filed with the commissioner;

41 b. Any fact or condition exists that, if it had existed at the time
42 when the licensee applied for its license, would have been grounds for
43 denying the application;

44 c. The licensee's net worth has become inadequate and the licensee,
45 after 10 days written notice from the commissioner, fails to take the
46 steps the commissioner deems necessary to remedy the deficiency;

1 d. The licensee knowingly violates any material provision of this
2 act or any rule or order validly promulgated by the commissioner
3 under authority of this act;

4 e. The licensee is conducting its business in an unsafe or unsound
5 manner;

6 f. The licensee is insolvent; for the purposes of this section, a
7 licensee shall be insolvent if: (1) the aggregate of its property at a fair
8 valuation, exclusive of any property which it may have conveyed,
9 transferred, concealed, removed or permitted to be concealed or
10 removed, with intent to defraud, hinder or delay its creditors, is not
11 sufficient in amount to pay its debts; or (2) the licensee is unable, by
12 its available assets or the honest use of credit, to pay its debts as they
13 become due;

14 g. The licensee has suspended payment of its obligations, has made
15 an assignment for the benefit of its creditors, or has admitted in
16 writing its inability to pay its debts as they become due;

17 h. The licensee has applied for an adjudication of bankruptcy,
18 reorganization, arrangement, or other relief under any bankruptcy;

19 i. The licensee refuses to permit the commissioner to make any
20 examination or investigation authorized by this act;

21 j. The licensee willfully fails to make any report required by this
22 act.

23 k. The licensee has willfully violated any provision of
24 31C.F.R.§103.11 et seq.; or

25 l. The licensee has willfully violated any provision of P.L.1994,
26 c.121 (C.2C:21-23 et seq.).

27
28 17. Licensees desiring to conduct licensed activities through
29 authorized delegates shall authorize each delegate to operate pursuant
30 to an express written contract, which shall provide that the licensee
31 appoints the person as its delegate with authority to engage in the
32 activities of a money transmitter on behalf of the licensee.

33
34 18. a. An authorized delegate shall not make any fraudulent or
35 false statement or misrepresentation to a licensee or to the
36 commissioner.

37 b. All money transmission or sale or issuance of payment
38 instrument activities conducted by authorized delegates shall be strictly
39 in accordance with the licensee's written procedures to the authorized
40 delegate.

41 c. An authorized delegate shall remit all money owing to the
42 licensee in accordance with the terms of the contract between the
43 licensee and the authorized delegate. The failure of an authorized
44 delegate to remit all money owing to a licensee within the time
45 presented shall result in liability of the authorized delegate to the
46 licensee for three times the licensee's actual damages. The

1 commissioner shall have the discretion to set, by regulation, the
2 maximum remittance time.

3 d. An authorized delegate is deemed to consent to the
4 commissioner's inspection, with or without prior notice to the licensee
5 or authorized delegate, of the books and records of the authorized
6 delegate of the licensee whenever the commissioner has a reasonable
7 basis to believe that the licensee or authorized delegate is not in
8 compliance with this act; and

9 e. An authorized delegate is under a duty to act only as authorized
10 under the contract with the licensee and an authorized delegate who
11 exceeds its authority is subject to cancellation of its contract and
12 further disciplinary action by the commissioner.

13 f. All funds (less fees) received by an authorized delegate of a
14 licensee from the sale or delivery of a payment instrument issued by a
15 licensee or received by an authorized delegate for transmission shall,
16 from the time the funds are received by an authorized delegate until
17 that time when the funds or an equivalent amount are remitted by the
18 authorized delegate to the licensee, constitute trust funds owned by
19 and belonging to the licensee. If an authorized delegate commingles
20 any trust funds with any other funds or property owned or controlled
21 by the authorized delegate, all commingled proceeds and other
22 property shall be impressed with a trust in favor of the licensee in the
23 amount equal to the amount of the proceeds due the licensee.

24 g. An authorized delegate shall report to the licensee the theft or
25 loss of payment instruments within 24 hours from the time it knew or
26 should have known of that theft or loss.

27 h. Authorized delegates shall comply with the provisions of
28 31 C.F.R§103.11 et seq. and P.L.1994, c.121 (C.2C:21-23 et seq.).

29 i. Authorized delegates shall conduct all business governed by this
30 act in the name of the licensee.

31

32 19. a. If, after notice and a hearing, the commissioner finds that
33 any authorized delegate of a licensee or any director, officer,
34 employee, or controlling person of that authorized delegate:

35 (1) has violated any provision of this act or of any rule or regulation
36 or order issued under this act;

37 (2) has engaged or participated in any unsafe or unsound act with
38 respect to the business of selling or issuing payment instruments of the
39 licensee or the business of money transmission; or

40 (3) has made or caused to be made in any application or report filed
41 with the commissioner or in any proceeding before the commissioner,
42 any statement which was at the time and in the circumstances under
43 which it was made, false or misleading with respect to any material
44 fact, or has omitted to state in any such application or report any
45 material fact which is required to be stated therein, the commissioner
46 may issue an order, pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (c.52:14B-1 et. seq.) suspending or barring the
2 authorized delegate from continuing to be or becoming an authorized
3 delegate of any licensee during the period for which the order is in
4 effect. Upon issuance of an order, the licensee shall terminate its
5 relationship with the authorized delegate according to the terms of the
6 order.

7 b. (1) Any authorized delegate to whom an order is issued under
8 this section may apply to the commissioner to modify or rescind the
9 order. The commissioner shall not grant the application unless the
10 commissioner finds that it is in the public interest to do so and that it
11 is reasonable to believe that the person will, if and when the person is
12 permitted to resume being an authorized delegate of a licensee, comply
13 with all applicable provisions of this act and of any regulation and
14 order issued under this act.

15 (2) The right of any authorized delegate to whom an order is
16 issued under this section to petition for judicial review of that order
17 shall not be affected by the failure of that person to apply to the
18 commissioner to modify or rescind the order.

19

20 20. A licensee's responsibility to any person for a money
21 transmission conducted on that person's behalf by the licensee or the
22 licensee's authorized delegate shall be limited to the amount of money
23 transmitted or the face amount of the payment instrument purchased
24 and any fee, commission or other benefit paid to the licensee or the
25 licensee's authorized delegate for that service.

26

27 21. The provisions of the "Administrative Procedure Act,"
28 P.L.1968, c.410 (52:14B-1 et seq.) shall apply to any hearing afforded
29 pursuant to this act.

30

31 22. a. If, after notice and hearing, the commissioner finds that a
32 person has violated any provision of this act or a rule adopted under
33 this act, the commissioner may order the person to pay the
34 commissioner a civil penalty in an amount specified by the
35 commissioner, not to exceed \$5,000 for each violation. Each violation
36 shall constitute a separate offense and the penalty under this section
37 shall be in addition to a suspension or revocation of a license. No such
38 proceeding shall be initiated and no penalty shall be assessed pursuant
39 to this section until after that person has been notified in writing of the
40 nature of the violation and has been afforded a reasonable period of
41 time, as set forth in the notice, to correct the violation and has failed
42 to do so. The provisions of the "penalty enforcement law,"
43 N.J.S.2A:58-1 et seq., shall apply.

44 b. The commissioner, in the exercise of the commissioner's
45 reasonable judgment, is authorized to compromise, settle, and collect
46 civil penalties with any person for violations of any provision of this

1 act, or of any rule, regulation or order issued or promulgated pursuant
2 to this act.

3
4 23. a. If it appears to the commissioner that any person has
5 committed or is about to commit a violation of any provision of this
6 act or of any rule or order of the commissioner, the commissioner may
7 apply to the Superior Court for an order enjoining that person from
8 violating or continuing to violate this act or any rule, regulation or
9 order of the commissioner and for injunctive or other relief as the
10 nature of the case may require.

11 b. The commissioner may enter into consent orders at any time
12 with any person to resolve any matter arising under this act. A
13 consent order shall be signed by the person to whom it is issued or a
14 duly authorized representative, and shall indicate agreement to the
15 terms contained therein. A consent order need not constitute an
16 admission by any person that any provision of this act, or any rule,
17 regulation or order promulgated or issued thereunder has been
18 violated, nor need it constitute a finding by the commissioner that the
19 person has violated any provision of this act or any rule, regulation or
20 order promulgated or issued thereunder.

21 c. Notwithstanding the issuance of a consent order, the
22 commissioner may seek civil or criminal penalties or compromise civil
23 penalties concerning matters encompassed by the consent order, unless
24 the consent order by its terms expressly precludes the commissioner
25 from so doing.

26 d. The commissioner is authorized to exchange fingerprint data
27 with and receive criminal history information from the Federal Bureau
28 of Investigation and the New Jersey Division of State Police or any
29 other appropriate agency for use in performing background checks.
30 The commissioner is authorized to conduct additional background
31 checks the commissioner deems appropriate.

32
33 24. a. Any person who knowingly and willfully violates any
34 provision of this act for which a penalty is not specifically provided is
35 guilty of a crime of the fourth degree.

36 b. Any person who knowingly and willfully makes a material, false
37 statement in any document filed or required to be filed under this act
38 with the intent to deceive the recipient of the document is guilty of a
39 crime of the third degree.

40 c. Any person who knowingly and willfully engages in the business
41 of money transmission without a license as provided herein shall be
42 guilty of a crime of the third degree.

43 d. Any person who purposely or knowingly refuses to permit any
44 lawful investigation by the commissioner or the Attorney General shall
45 be guilty of a crime of the third degree.

1 25. The commissioner shall promulgate regulations pursuant to the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
3 necessary to effectuate the provisions of this act.

4
5 26. a. Any licensee, authorized delegate or other person who
6 engages in business activities that are regulated under this act, with
7 or without filing an application, is deemed to have done both of the
8 following:

9 (1) Consented to the jurisdiction of the courts of this State for all
10 actions arising under this act; and

11 (2) Appointed the commissioner as his lawful agent for the purpose
12 of accepting service of process in any action, suit or proceeding that
13 may arise under this act.

14 b. Within three business days after service of process upon the
15 commissioner, the commissioner shall transmit by certified mail copies
16 of all lawful process accepted by the commissioner as an agent to that
17 person at its last known address. Service of process shall be
18 considered complete three business days after the commissioner
19 deposits copies of the documents in the United States mail.

20
21 27. Every person engaged in activities within this State
22 encompassed by this act on the effective date of this act, except those
23 persons already licensed under chapter 15 of Title 17 of the Revised
24 Statutes or P.L.1964, c.273 (C.17:15B-1 et seq.), shall file an
25 application in accordance with the provisions of this act within 90 days
26 after the date this act becomes operative. A person licensed under
27 chapter 15 of Title 17 of the Revised Statutes or P.L.1964, c.273
28 (C.17:15B-1 et seq.), shall continue as a licensee under this act until
29 April 1, 1998, at which time, if the licensee intends to continue to
30 engage in activities regulated by this act, the licensee shall renew the
31 license as a licensee under the provisions of this act no later than
32 April 1, 1998.

33
34 28. The following are repealed:
35 R.S.17:15-1 through R.S.17:15-10
36 P.L.1964, c.273 (C.17:15B-1 et seq.).

37
38 29. Section 25 of this act shall take effect immediately and the
39 remainder of this act shall take effect on January 1, 1998.

40
41
42 **STATEMENT**

43
44 This bill provides for the licensing and regulation of persons
45 engaged in the business of money transmission. Under the bill the
46 business of a money transmitter is defined as: a person who engages,

1 either directly or through an authorized delegate, in the business of:

2 (1) the sale or issuance of payment instruments for a fee,
3 commission or other benefit;

4 (2) the receipt of money for transmission or transmitting money
5 within the United States or to locations abroad by any and all means,
6 including but not limited to payment instrument, wire, facsimile,
7 electronic transfer, or otherwise for a fee, commission or other benefit;
8 or

9 (3) the receipt of money for obligors for the purpose of paying
10 obligor's bills, invoices or accounts for a fee, commission or other
11 benefit paid by the obligor.

12 Currently these activities are regulated as foreign money
13 transmitters under R.S.17:15-1 et seq. and "The Check Selling Law,"
14 P.L.1964, c.273 (C.17:15B-1 et seq.).

15 The bill restricts the business of money transmission to those
16 licensed under the bill but provides an exception for federal and state
17 departments and agencies (including the provision of electronic
18 transfer of government benefits), bank holding companies, state or
19 federally chartered banks, savings banks, savings and loan associations
20 or credit unions or a person licensed as a debt adjuster. Each licensee
21 is required to have a net worth of \$100,000 plus an additional net
22 worth amount of \$25,000 for each location or authorized delegate
23 through whom its business is conducted in this State, up to a maximum
24 net worth amount of \$1,000,000, regardless of the total number of
25 locations and authorized delegates.

26 The bill requires each application for a license to be accompanied
27 by a surety bond or similar security device acceptable to the
28 commissioner in an amount set by the commissioner of not less than
29 \$100,000 or more than \$1,000,000.

30 Under the bill, a license is good for two years. The bill requires the
31 Commissioner of Banking and Insurance to set a license fee, which is
32 not greater than \$4,000 for that two-year period.

33 Each licensee is required to keep certain records for a period of
34 three years, which are to be available to the commissioner for
35 inspection and examination, whether in an office in this State or out-
36 of-State. The licensee is to bear the cost of any examination.

37 Under the bill, a licensee is permitted to conduct licensed activities
38 through authorized delegates pursuant to an express written contract
39 which provides that the licensee appoints the person as its delegate
40 with authority to engage in the activities of a money transmitter on its
41 behalf.

42 The bill authorizes the commissioner to enforce the provisions of
43 the bill and upon notice and a hearing, issue an order suspending or
44 barring an authorized delegate from continuing to engage in the money
45 transmitting business. Authorized delegates have the right to apply to
46 have any order modified or rescinded.

- 1 The bill provides for the imposition of civil and criminal penalties
- 2 for a violation of any of its provisions.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 956

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Assembly Banking and Insurance Committee reports favorably and with committee amendments Assembly Bill No. 956.

This bill, as amended, provides for the licensing and regulation of persons engaged in the business of money transmission. Under the bill the business of a money transmitter is defined as: a person who engages, either directly or through an authorized delegate, in the business of:

(1) the sale or issuance of payment instruments (i.e., money orders) for a fee, commission or other benefit;

(2) the receipt of money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit; or

(3) the receipt of money for obligors for the purpose of paying obligor's bills, invoices or accounts for a fee, commission or other benefit paid by the obligor (i.e., third party bill payers).

Currently only two of these activities are regulated: foreign money transmitters under R.S.17:15-1 et seq. and money order issuers under "The Check Selling Law," P.L.1964, c.273 (C.17:15B-1 et seq.); domestic money transmitters and third party bill payers are not regulated.

The bill restricts the business of money transmission to those licensed under the bill but provides an exception for federal and state departments and agencies (including the provision of electronic transfer of government benefits), bank holding companies, State or federally chartered banks, savings banks, savings and loan associations or credit unions or a person licensed as a debt adjuster. Except as provided specifically for a person licensed to engage only in the business of a foreign money transmitter, each person licensed as a money transmitter is required to have and maintain a net worth of \$100,000 plus an additional net worth amount of \$25,000 for each location or authorized delegate through whom its business is conducted in this State, up to a maximum net worth amount of

\$1,000,000, regardless of the total number of locations and authorized delegates. Each person licensed to engage only in the business of a foreign money transmitter is required to have and maintain a net worth of \$50,000 plus an additional net worth amount of \$25,000 for each location or authorized delegate through whom its business is conducted in this State, up to a maximum net worth amount of \$400,000, regardless of the total number of locations and authorized delegates. For persons currently licensed as foreign money remitters, the bill provides a phase in period to reach the net worth requirements; by July 1, 2001, each person licensed to engage only in the business of a foreign money transmitter has to have and maintain the full net worth amount required for that license under the bill.

The bill requires each application for a license as a money transmitter to be accompanied by a surety bond or similar security device acceptable to the Commissioner of Banking and Insurance in an amount set by the commissioner of not less than \$100,000 or more than \$1,000,000. For an application to engage only in the business of a foreign money transmitter, the bill establishes a graduated scale for the amount of a surety bond or similar security device, beginning at \$25,000 and increasing to \$100,000 depending on the annual volume of business of the licensee. For an annual volume of business in excess of \$15 million, the amount of the surety bond or other similar security device is to be set by the commissioner by regulation in an amount not less than \$100,000 and not in excess of \$1,000,000.

For persons currently licensed as foreign money remitters, the bill also provides a phase in period for reaching the amount of the surety bond or other security device. Each person who wants to continue to engage in business in this State only as a foreign money remitter is required to have a surety bond or other similar security devices in the amount of \$25,000 by the first business day following 90 days after the effective date of the act. By July 1, 2001, each foreign money remitter is required to be in full compliance with the surety bond or other similar security device amount required in the bill.

Under the bill, a license is good for two years. The bill requires the commissioner to set a license fee, which is not greater than \$4,000 for that two-year period.

With respect to the supervisory and regulatory purposes of the Department of Banking and Insurance, each licensee is required to keep certain records for a period of three years, which are to be available to the commissioner for inspection and examination, whether in an office in this State or out-of-State. The licensee is to bear the cost of any examination.

Under the bill, a licensee is permitted to conduct licensed activities through authorized delegates pursuant to an express written contract which provides that the licensee appoints the person as its delegate with authority to engage in the activities of a money transmitter on its behalf.

The bill authorizes the commissioner to enforce the provisions of

the bill and upon notice and a hearing, issue an order suspending or barring an authorized delegate from continuing to engage in the money transmitting business. Authorized delegates have the right to apply to have any order modified or rescinded.

The bill provides that a foreign money remitter has to provide a compiled financial statement as part of its annual report instead of an audited financial statement, except that the commissioner, for good cause, may request that a foreign money remitter submit an audited financial statement.

The bill provides for the imposition of civil and criminal penalties for a violation of any of its provisions.

The committee amended the bill to: define a foreign money transmitter; provide for a different net worth and surety bond requirement for persons licensed to engage only in the business of a foreign money transmitter; provide a phase in period during which time a person licensed currently as a foreign money remitter is to meet the higher net worth and security device requirements to continue to engage in the business of a foreign money transmitter under the bill; provide that a foreign money transmitter is required to submit a compiled financial statement as part of its annual report and change the effective date of the bill.

This bill was prefiled for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE, No. 306

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator PETER A. INVERSO
District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senators Baer and Bryant

SYNOPSIS

Provides for the licensing and regulation of money transmitters.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/27/1998)

S306 INVERSO

2

1 AN ACT concerning money transmitters, supplementing Title 17 of the
2 Revised Statutes and repealing chapter 15 of Title 17 of the
3 Revised Statutes and P.L.1964, c.273.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the "New Jersey
9 Money Transmitters Act."

10
11 2. As used in this act:

12 "Applicant" means a person filing an application for a license under
13 this act.

14 "Authorized delegate" means an entity authorized by the licensee
15 pursuant to the provisions of section 17 of this act to sell or issue
16 payment instruments or engage in the business of transmitting money
17 on behalf of a licensee.

18 "Commissioner" means the Commissioner of Banking and
19 Insurance.

20 "Control" means ownership of, or the power to vote, 25 percent or
21 more of the outstanding voting securities of a licensee or controlling
22 person. For purposes of determining the percentage of a licensee
23 controlled by any person, there shall be aggregated with the person's
24 interest the interest of any other person controlled by that person or
25 by any spouse, parent, or child of that person.

26 "Controlling person" means any person in control of a licensee.

27 "Department" means the Department of Banking and Insurance.

28 "Executive officer," means the licensee's president, chairman of the
29 executive committee, senior officer responsible for the licensee's
30 business in this State, chief financial officer and any other person who
31 performs similar functions.

32 "Key shareholder" means any person, or group of persons acting in
33 concert, who is the owner of 25 percent or more of any voting class
34 of an applicant's stock.

35 "Licensee" means a person licensed under this act.

36 "Location" means a place of business at which activities regulated
37 by this act occur.

38 "Material litigation" means any litigation that, according to
39 generally accepted accounting principles, is deemed significant to any
40 applicant's or licensee's financial health and would be required to be
41 referenced in that entity's annual audited financial statements, report
42 to shareholders or similar documents.

43 "Money" means a medium of exchange authorized or adopted by
44 the United States or a foreign government as a part of its currency and
45 that is customarily used and accepted as a medium of exchange in the
46 country of issuance.

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1 "Money transmitter" means a person who engages in this State in
2 the business of:

3 (1) the sale or issuance of payment instruments for a fee,
4 commission or other benefit;

5 (2) the receipt of money for transmission or transmitting money
6 within the United States or to locations abroad by any and all means,
7 including but not limited to payment instrument, wire, facsimile,
8 electronic transfer, or otherwise for a fee, commission or other
9 benefit; or

10 (3) the receipt of money for obligors for the purpose of paying
11 obligors' bills, invoices or accounts for a fee, commission or other
12 benefit paid by the obligor.

13 "Outstanding payment instrument" means any payment instrument
14 issued by the licensee which has been sold in the United States directly
15 by the licensee or any payment instrument issued by the licensee which
16 has been sold by an authorized delegate of the licensee in the United
17 States, which has been reported to the licensee as having been sold,
18 and which has not yet been paid by or for the licensee.

19 "Payment instrument" means any check, draft, money order,
20 travelers check or other instrument or written order for the
21 transmission or payment of money, sold or issued to one or more
22 persons, whether or not the instrument is negotiable. The term
23 "payment instrument" does not include any credit card voucher, any
24 letter of credit or any instrument which is redeemable by the issuer in
25 goods or services.

26 "Permissible investments" means:

27 (1) cash;

28 (2) certificates of deposit or other debt obligations of a bank,
29 savings bank, savings and loan association, or credit union, either
30 domestic or foreign;

31 (3) bills of exchange or time drafts drawn on and accepted by
32 a commercial bank, otherwise known as bankers' acceptances, which
33 are eligible for purchase by member banks of the Federal Reserve
34 System;

35 (4) any investment which is rated in one of the three highest
36 rating categories by a nationally recognized statistical rating
37 organization;

38 (5) investment securities that are obligations of the United
39 States, its agencies or instrumentalities, or obligations that are
40 guaranteed fully as to principal and interest by the United States, or
41 any obligations of any state, municipality or any political subdivision
42 thereof which is rated in one of the three highest rating categories by
43 a nationally recognized statistical rating organization;

44 (6) shares in a money market mutual fund, interest-bearing
45 bills, notes or bonds, debentures or stock traded on any national
46 securities exchange or on a national over-the-counter market, or

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1 mutual funds primarily composed of those securities or a fund
2 composed of one or more permissible investments as set forth in this
3 section;

4 (7) demand borrowing agreements made to a corporation or a
5 subsidiary of a corporation whose capital stock is listed on a national
6 exchange;

7 (8) receivables which are due to a licensee from its authorized
8 delegates pursuant to a contract described in section 17 of this act,
9 which are not past due or doubtful of collection; or

10 (9) any other investments or security device which the
11 commissioner may authorize by rule.

12

13 3. a. This act shall not apply to:

14 (1) The United States or any department, agency, or
15 instrumentality thereof;

16 (2) The United States Postal Service;

17 (3) The State or any political subdivision thereof;

18 (4) Banks, bank holding companies, credit unions, building and
19 loan associations, savings and loan associations, savings banks or
20 mutual banks organized under the laws of any state or the United
21 States, provided that they do not issue or sell payment instruments
22 through authorized delegates who are not banks, bank holding
23 companies, credit unions, building and loan associations, savings and
24 loan associations, savings banks or mutual banks;

25 (5) The provision of electronic transfer of government benefits
26 for any federal, state or county agency as defined in Regulation E, 12
27 C.F.R. §205.1 et seq., by a contractor for and on behalf of the United
28 States or any department, agency or instrumentality thereof, or any
29 state or political subdivision thereof; and

30 (6) A person licensed to conduct business as a debt adjuster
31 pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.), when acting within
32 the scope of activities regulated by that license.

33 b. Authorized delegates of a licensee, acting within the scope of
34 authority conferred by a written contract as described in section 17 of
35 this act shall not be required to obtain a license pursuant to this act.

36

37 4. a. No person, other than a person exempt from the provisions
38 of this act pursuant to section 3, shall engage in the business of money
39 transmission without a license as provided in this act.

40 b. A licensee may conduct its business in this State at one or
41 more locations, directly or indirectly owned, or through one or more
42 authorized delegates, or both, pursuant to the single license granted to
43 the licensee under this act.

44

45 5. a. Each licensee shall at all times have a net worth of not less
46 than \$100,000, calculated in accordance with generally accepted

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1 accounting principles. Licensees engaging in money transmission at
2 more than one location or through authorized delegates shall have an
3 additional net worth of \$25,000 per location or agent located in this
4 State, as applicable, up to a maximum net worth amount of
5 \$1,000,000.

6 b. Every corporate applicant, at the time of filing an application
7 and at all times after a license is issued, shall be in good standing in the
8 state of its incorporation. All non-corporate applicants shall, at the
9 time of the filing of an application and at all times after a license is
10 issued, be registered or qualified to do business in this State.

11

12 6. a. Each licensee shall at all times possess permissible
13 investments having an aggregate market value, calculated in
14 accordance with generally accepted accounting principles, of not less
15 than the aggregate face amount of all outstanding payment instruments
16 issued or sold by the licensee in the United States. This requirement
17 may be waived by the commissioner if the dollar volume of a licensee's
18 outstanding payment instruments does not exceed the bond or other
19 security devices posted by the licensee pursuant to section 8 of this
20 act.

21 b. In the event of bankruptcy of the licensee, permissible
22 investments, even if commingled with other assets of the licensee, shall
23 be deemed to be held in trust for the benefit of the purchasers and
24 holders of the licensee's outstanding payment instruments by operation
25 of law.

26

27 7. Each application for a license shall be made in writing, under
28 oath, and in a form prescribed by the commissioner. Each application
29 shall contain:

30 a. For all applicants:

31 (1) The exact name of the applicant, the applicant's principal
32 address, any fictitious or trade name used by the applicant in the
33 conduct of its business and the location of the applicant's business
34 records;

35 (2) The history, if any, of the applicant's material litigation
36 and criminal convictions for the five year period prior to the date of
37 the application;

38 (3) A description of the activities conducted by the applicant
39 and a history of operations;

40 (4) A description of the business activities in which the
41 applicant seeks to be engaged in the State;

42 (5) A list identifying the applicant's proposed authorized
43 delegates in the State, if any, at the time of the filing of the license
44 application;

45 (6) A sample authorized delegate contract, if applicable;

46 (7) A sample form of payment instrument, if applicable;

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- 1 (8) Each location at which the applicant and its authorized
2 delegates, if any, propose to conduct the licensed activities in the
3 State;
- 4 (9) The name and address of each clearing bank on which the
5 applicant's payment instruments will be drawn or through which those
6 payment instruments will be payable;
- 7 (10) A list identifying each country to which an applicant
8 proposes to transmit money or from which an applicant proposes to
9 receive money transmissions;
- 10 (11) Federal tax identification number; and
- 11 (12) Non-refundable application fee as prescribed by
12 regulation by the commissioner in an amount not to exceed \$1,000.
- 13 b. If the applicant is a corporation, the applicant shall also provide:
- 14 (1) The date of the applicant's incorporation and state of
15 incorporation;
- 16 (2) A certificate of good standing from the state in which the
17 applicant was incorporated;
- 18 (3) A description of the corporate structure of the applicant,
19 including the identity of any parent or subsidiary of the applicant, and
20 the disclosure of whether any parent or subsidiary is publicly traded on
21 any stock exchange;
- 22 (4) The name, business and residence address, social security
23 number, date of birth and employment history for the past five years
24 of each of the applicant's executive officers and of each officer or
25 manager who will be in charge of the applicant's activities to be
26 licensed under this act;
- 27 (5) The name, business and residence address, social security
28 number, date of birth and employment history for the period five years
29 prior to the date of the application of each key shareholder of the
30 applicant;
- 31 (6) The history, if any, of material litigation and criminal
32 convictions for the five year period prior to the date of the application
33 of every executive officer or key shareholder of the applicant;
- 34 (7) A copy of the applicant's most recent audited financial
35 statements (including balance sheet, statement of income or loss,
36 statement of changes in shareholder equity and statement of changes
37 in financial position) prepared by a certified public accountant or
38 public accountant in good standing and, if available, the applicant's
39 audited financial statements for the immediately preceding three year
40 period. However, if the applicant is a wholly owned subsidiary of
41 another corporation, the applicant may submit either the parent
42 corporation's consolidated audited financial statements for the current
43 year and for the immediately preceding three year period or the parent
44 corporation's Form 10-K reports filed with the Securities and
45 Exchange Commission for the prior three years in lieu of the
46 applicant's financial statements. If the applicant is a wholly owned

1 subsidiary of a corporation having its principal place of business
2 outside the United States, similar documentation filed with the parent
3 corporation's non-United States regulator may be submitted to satisfy
4 this provision;

5 (8) Copies of all filings, if any, made by the applicant with the
6 Securities and Exchange Commission, or with a similar regulator in a
7 country other than the United States, within the year preceding the
8 date of filing of the application; and

9 (9) Except in the case of a publicly traded corporation, its
10 subsidiaries and affiliates, or a bank, bank holding company,
11 subsidiaries and affiliates thereof, fingerprints of each of the applicant's
12 executive officers and of each officer or manager who will be in charge
13 of the applicant's activities to be licensed hereunder.

14 c. If the applicant is not a corporation, the applicant shall also
15 provide:

16 (1) The name, business and residence address, personal
17 financial statement and employment history for the past five years,
18 social security number, date of birth, and fingerprints of each principal
19 of the applicant and the name, business and residence address,
20 employment history for the past five years, social security number,
21 date of birth, and fingerprints of any other persons who will be in
22 charge of the applicant's activities to be licensed under this act;

23 (2) The place and date of the applicant's registration or
24 qualification to do business in this State;

25 (3) The history, if any, of material litigation and criminal
26 convictions for the five year period prior to the date of the application
27 for each individual having any ownership interest in the applicant and
28 each individual who exercises supervisory responsibility with respect
29 to the applicant's activities; and

30 (4) Copies of the applicant's audited financial statements (including
31 balance sheet, statement of income or loss, and statement of changes
32 in financial position) prepared by a certified public accountant or
33 public accountant in good standing for the current year and, if
34 available, for the immediately preceding two year period; and

35 (5) Alien registration information, if applicable.

36 d. Such other information as the commissioner may require by
37 regulation.

38

39 8. a. Each application must be accompanied by a surety bond,
40 irrevocable letter of credit or such other similar security device
41 (hereinafter "security device") acceptable to the commissioner in an
42 amount prescribed by the commissioner by regulation of not less than
43 \$100,000 and not more than \$1,000,000. The security device shall be
44 in a form satisfactory to the commissioner and shall run to the State
45 for the benefit of any person injured by a wrongful act, default, fraud
46 or misrepresentation of the licensee, including its directors, officers,

1 authorized delegates and employees, to secure the faithful performance
2 of the obligations of the licensee with respect to the receipt, handling,
3 transmission, and payment of money in connection with the sale and
4 issuance of payment instruments, transmission of money, or both. In
5 the case of a bond, the bond shall be obtained from a surety company
6 authorized to do business in this State and the aggregate liability of the
7 surety in no event shall exceed the principal sum of the bond.

8 b. In lieu of the security device or of any portion of the principal
9 thereof, as required by this section, the licensee may deposit with the
10 commissioner, or with banks in this State that the licensee designates
11 and the commissioner approves, cash, interest-bearing stocks and
12 bonds, notes, debentures or other obligations of the United States or
13 any agency or instrumentality thereof, or guaranteed by the United
14 States, or of this State, or of a political subdivision or instrumentality
15 of this State, or guaranteed by this State which is rated in one of the
16 three highest categories by a nationally recognized statistical rating
17 organization, to an aggregate amount, based upon principal amount
18 or market value, whichever is lower, of not less than the amount of the
19 security device or portion thereof. The securities, cash, or both, shall
20 be deposited as aforesaid and held to secure the same obligations as
21 the security device, but the depositor shall be entitled to receive all
22 interest and dividends thereon, shall have the right, with the approval
23 of the commissioner, to substitute other securities for those deposited,
24 and shall be required to do so on written order of the commissioner for
25 good cause shown.

26 c. The security device shall remain in effect until cancellation,
27 which may occur only after thirty days' written notice to the
28 commissioner. Cancellation shall not affect any liability incurred or
29 accrued during that period.

30 d. The security device shall remain in place for no longer than five
31 years after the licensee ceases money transmission operations in the
32 State. However, notwithstanding this provision, the commissioner
33 may permit the security device to be reduced or eliminated prior to
34 that time to the extent that the amount of the licensee's payment
35 instruments outstanding in this State are reduced. The commissioner
36 may also permit a licensee to substitute a letter of credit or other form
37 of security device acceptable to the commissioner for the security
38 device in place at the time the licensee ceases money transmission
39 operations in the State by surrender, revocation or expiration of its
40 license.

41

42 9. a. Upon the filing of a complete application, in the case of an
43 initial application, or the filing of a complete biennial renewal
44 application, the commissioner shall investigate the financial condition
45 and responsibility, financial and business experience, character and
46 general fitness of the applicant for an initial license or a renewal

1 license. The commissioner may conduct an on-site investigation of the
2 applicant for an initial license, the reasonable cost of which shall be
3 borne by the applicant. If the commissioner finds that the applicant's
4 business will be conducted honestly, fairly and in a manner
5 commanding the confidence and trust of the community and that the
6 applicant has fulfilled the requirements imposed by this act and has
7 paid the required license fee, the commissioner shall issue a license to
8 the applicant authorizing the applicant to engage in the licensed
9 activities in this State. If these requirements have not been met, the
10 commissioner shall deny the application in writing, setting forth the
11 reasons for the denial.

12 b. The commissioner shall approve or deny every application for an
13 initial license within 120 days from the date that the applicant has
14 satisfied all requirements for licensure.

15 c. The license fee for each two-year period, or any part thereof,
16 shall be in an amount prescribed by the commissioner by rule or
17 regulation, not to exceed \$4,000. The two-year license period shall be
18 set by the commissioner by rule or regulation. A license shall run from
19 the date of issuance to the end of the biennial period. If the initial
20 license is issued in the second year of the biennial licensing period, the
21 license fee shall be in an amount not to exceed \$2,000.

22 d. Each license issued pursuant to this act shall expire at the end
23 of the biennial licensing period. Licenses shall not be transferable or
24 assignable.

25 e. The licensee shall submit a biennial fee to register locations in
26 the State. The fee shall be established by the commissioner by
27 regulation in an amount which is not less than \$25 per location in the
28 State but which shall not to exceed a maximum amount of \$5,000 for
29 all locations.

30 f. Within 45 days after the end of each calendar quarter, each
31 licensee shall file with the commissioner in writing a list of all locations
32 within the State that have been added or terminated by the licensee, if
33 any. The list shall include the name and business address of each
34 location.

35 g. If the licensed name or licensed business address is changed,
36 the licensee shall notify the commissioner in writing of the change
37 within 10 days.

38

39 10. a. Each licensee, shall make, keep and preserve the following
40 books, accounts and other records for a period of three years:

41 (1) a record of each payment instrument sold;

42 (2) a general ledger containing all assets, liabilities, capital,
43 income and expense accounts (which general ledger shall be posted at
44 least monthly);

45 (3) settlement sheets received from authorized delegates;

46 (4) bank statements and bank reconciliation records;

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- 1 (5) records of outstanding payment instruments;
2 (6) records of each payment instrument paid within the three
3 year period;
4 (7) a list of names and addresses of all of the licensee's
5 authorized delegates;
6 (8) a list of all countries to which money is transmitted or
7 from which money is received for transmission;
8 (9) a list of the names and addresses of all clearing banks
9 through which the licensee's money transmission business is
10 conducted;
11 (10) such other books and records as the commissioner may
12 require by regulation.

13 b. Maintenance of the documents required by this section in a
14 photographic, electronic or other similar form shall constitute
15 compliance with this section.

16 c. Each licensee shall maintain the records it is required to
17 maintain pursuant to 31 C.F.R. §103.11 et seq..

18 d. The records of the licensee regarding business regulated under
19 this act shall be maintained at its principal place of business or, with
20 notice to the commissioner, at another location designated by the
21 licensee. If the records are maintained outside this State, the
22 commissioner may require that the licensee reimburse the department
23 for the travel costs incurred in the examination or investigation of
24 those records or may require that the licensee make those records
25 available to the commissioner at the commissioner's office not more
26 than seven business days after demand. The commissioner may further
27 require that those records be accompanied by an individual who will
28 be available to answer questions regarding those records and the
29 business regulated under this act. The commissioner may require the
30 appearance of a specific individual, or request that the licensee
31 designate an individual with knowledge of the records and the
32 business.

33
34 11. a. The commissioner may investigate and examine any licensee
35 or other person the commissioner deems necessary to determine
36 compliance with this act and the orders, rules and regulations issued
37 hereunder. For these purposes, the commissioner may examine the
38 books, accounts, records, and other documents or matters of any
39 licensee or other person. The commissioner shall have the power to
40 compel by subpoena the production of all relevant books, records and
41 other documents and materials relative to an examination or
42 investigation. The cost of the investigations and examinations shall be
43 borne by the licensee.

44 b. Examinations and investigations conducted under the
45 provisions of this section shall be confidential except as required in the
46 administration, enforcement and prosecution of violations under this

1 act, or pursuant to a court order made upon notice to the
2 commissioner and after affording the commissioner an opportunity to
3 advise the court of reasons for excluding that evidence. The court shall
4 order the issuance of a subpoena for the production or admission into
5 evidence of any report or portion thereof, only if it is satisfied that: (1)
6 it is material and relevant to the issues in the proceedings; and (2) the
7 ends of justice and public advantage will be served thereby. If any
8 person refuses to obey a subpoena, or to give testimony or produce
9 evidence as required thereby, the commissioner may apply *ex parte* to
10 any court having jurisdiction over that person for an order compelling
11 the appearance of the witness before the commissioner to give
12 testimony or to produce evidence as required thereby, or both. The
13 commissioner, in lieu of an on-site examination, may establish by
14 regulation other reports which will be deemed acceptable and which
15 will be considered for all purposes an official report of the
16 commissioner.

17 c. The commissioner may request additional financial data from
18 a licensee or conduct an on-site examination or investigation of any
19 authorized delegate or location of a licensee within this State without
20 prior notice to the authorized delegate or licensee if the commissioner
21 has a reasonable basis to believe that the licensee or authorized
22 delegate is not in compliance with this act. Whenever the
23 commissioner examines or investigates an authorized delegate's
24 operations, the authorized delegate shall pay the costs of that
25 examination or investigation, but the licensee shall remain liable for
26 ensuring that the payment is made. Whenever the commissioner
27 examines or investigates a licensee's location within the State, the
28 licensee shall pay all reasonably incurred costs of that examination.

29
30 12. a. Each licensee shall file with the commissioner on or before
31 April 1 of each year an annual report containing the information
32 required by the commissioner by regulation, along with a fee in an
33 amount set by the commissioner by regulation not to exceed \$200.

34 b. The commissioner may require reports of any licensee or
35 authorized delegate, under penalty of perjury or otherwise, concerning
36 the licensee's or authorized delegate's business conducted pursuant to
37 the license issued under this act, as the commissioner requires for the
38 enforcement of this act.

39 c. A licensee who fails to file any report required by this section
40 on or before the day designated for making the report, or fails to
41 include any prescribed matter in the report, shall pay a penalty of \$100
42 for each day that the report is delayed or incomplete, unless the
43 commissioner, for good cause shown, reduces the amount to be paid,
44 or unless the time to file the report is extended in writing by the
45 commissioner. The penalty may be recovered in a summary

1 proceeding under the "penalty enforcement law" (N.J.S.2A:58-1 et
2 seq.).

3 d. The licensee shall include in its annual report:

4 (1) a copy of its most recent audited consolidated annual
5 financial statement, including balance sheet, statement of income or
6 loss, statement of changes in shareholder's equity and statement of
7 changes in financial position, or, in the case of a licensee that is a
8 wholly owned subsidiary of another corporation, the consolidated
9 audited annual financial statement of the parent corporation may be
10 filed in lieu of the licensee's audited annual financial statement;

11 (2) for the most recent quarter for which data is available prior
12 to the date of the filing of the annual report, but in no event more than
13 120 days prior to the annual report filing date, the licensee shall
14 provide the number of payment instruments sold by the licensee in the
15 State, the dollar amount of those instruments and the dollar amount of
16 those instruments currently outstanding;

17 (3) any material changes to any of the information submitted
18 by the licensee on its original application which have not previously
19 been reported to the commissioner on any other report required to be
20 filed under this act;

21 (4) a list of the licensee's permissible investments;

22 (5) a list of the locations within this State at which business
23 regulated by this act is being conducted by either the licensee or its
24 authorized delegate.

25 (6) such other information as the commissioner may require
26 by regulation.

27

28 13. Within 15 days of the occurrence of any one of the events
29 listed below, a licensee shall file a written report with the
30 commissioner describing the event and its expected impact on the
31 licensee's activities in the State:

32 a. The filing for bankruptcy or reorganization by the licensee;

33 b. The institution of revocation or suspension proceedings against
34 the licensee by any state or governmental authority with regard to the
35 licensees' money transmission activities;

36 c. Any indictment of the licensee or any of its key officers or
37 directors related to money transmission activities and specified as a
38 crime by P.L.1994 c.121 (C.2C:21-23 et seq.);

39 d. Any conviction of the licensee or any of its key officers or
40 directors related to money transmission activities and specified as a
41 crime by P.L.1994 c.121 (C.2C:21-23 et seq.).

42

43 14. a. A person shall not directly or indirectly acquire control of
44 a licensee without the prior written approval of the commissioner. The
45 application for change of control shall be in writing in a form
46 prescribed by the commissioner and shall be accompanied by the

1 information, data and records the commissioner requires by
2 regulation. The application shall be accompanied by a fee in an amount
3 not to exceed \$500 set by the commissioner by regulation.

4 b. The commissioner shall deny the application to acquire control
5 of a licensee if the commissioner finds that the acquisition of control
6 is contrary to law or that disapproval is reasonably necessary to
7 protect the interest of the public. In making that determination, the
8 commissioner shall consider the following:

9 (1) Whether the financial condition of the person that seeks to
10 control the licensee might jeopardize the financial condition of the
11 licensee or the interests of the public in the conduct of the business
12 regulated under this act; and

13 (2) Whether the competence, experience, and integrity of the
14 person who seeks to control the licensee, or the officers, directors and
15 controlling persons of the person who seeks to control the licensee,
16 indicate that it would not be in the interests of the public to permit that
17 person to control the licensee.

18 c. Nothing in this section shall prohibit a person from negotiating
19 or entering into agreements subject to the condition that the
20 acquisition of control will not be effective until approved by the
21 commissioner.

22 d. This section shall not apply to any of the following persons or
23 transactions:

24 (1) A registered dealer who acts as an underwriter or member
25 of a selling group in a public offering of the voting securities of a
26 licensee or controlling person of a licensee;

27 (2) A person who acts as proxy for the sole purpose of voting
28 at a designated meeting of the security holders of a licensee or
29 controlling person of a licensee;

30 (3) A person who acquires control of a licensee or controlling
31 person as a personal representative, custodian, guardian, conservator,
32 trustee or other officer appointed by a court of competent jurisdiction
33 or by operation of law;

34 (4) Purchases of a controlling amount of shares on a national
35 stock exchange of a publicly held licensee, until the licensee has actual
36 notice of that purchase and, within five days, notifies the
37 commissioner; and

38 (5) Any other person or transaction that the commissioner by
39 rule or order exempts in the public interest.

40 e. Before filing an application for approval to acquire control, a
41 person may request in writing a determination from the commissioner
42 as to whether that person will be deemed in control, upon
43 consummation of a proposed transaction. If the commissioner
44 determines in response to that request that the person will not be in
45 control within the meaning of this act, the commissioner shall notify
46 the person that the proposed transaction is not subject to the

1 requirements of this section.

2

3 15. a. Notwithstanding any other provision of law, all information
4 or reports obtained by the department from an applicant, licensee or
5 authorized delegate, whether obtained through reports, applications,
6 examinations, audits, investigations, or otherwise, including, but not
7 limited to: (1) all information contained in or related to examination,
8 investigation, operating, or condition reports prepared by, on behalf
9 of, or for the use of the department; or (2) financial statements,
10 balance sheets, or authorized delegate information, are confidential
11 and may not be disclosed or distributed outside the department by the
12 commissioner or any officer or employee of the department. The
13 commissioner, however, may provide for the release of information to
14 representatives of state or federal agencies and foreign countries
15 having regulatory or supervisory authority over the activities of the
16 licensee or similar licensees if those representatives, upon request of
17 the commissioner, disclose similar information respecting those
18 licensees under their regulation or supervision, or to those
19 representatives who state in writing under oath that they shall maintain
20 the confidentiality of that information.

21 b. The commissioner may:

22 (1) Disclose the fact of filing of applications with the
23 department pursuant to this act, give notice of a hearing, if any,
24 regarding those applications, and announce his action thereon;

25 (2) Disclose final decisions in connection with proceedings for
26 the suspension or revocation of licenses issued pursuant to this act;

27 (3) Prepare and circulate reports reflecting the assets and
28 liabilities of money transmitters in general, including other information
29 considered pertinent to the purpose of each report for general
30 statistical information; and

31 (4) Prepare and circulate reports as provided by law.

32 c. Every official report of the department is prima facie evidence
33 of the facts therein stated in any action or proceeding wherein the
34 commissioner is a party.

35 d. Nothing in this section shall be construed to prevent the
36 disclosure of information that is admissible in evidence in any civil or
37 criminal proceeding brought by or at the request of the commissioner
38 or this State to enforce or prosecute violations of this act or the rules,
39 regulations or orders issued or promulgated pursuant to this act.

40

41 16. After notice and hearing pursuant to the "Administrative
42 Procedure Act" P.L.1968, c.410 (c.52:14B-1 et. seq.), the
43 commissioner may suspend or revoke a licensee's license if the
44 commissioner finds that:

45 a. The licensee has made a material misstatement or suppressed
46 or withheld information on the application for a license or any

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1 document required to be filed with the commissioner;

2 b. Any fact or condition exists that, if it had existed at the time
3 when the licensee applied for its license, would have been grounds for
4 denying the application;

5 c. The licensee's net worth has become inadequate and the
6 licensee, after 10 days written notice from the commissioner, fails to
7 take the steps the commissioner deems necessary to remedy the
8 deficiency;

9 d. The licensee knowingly violates any material provision of this
10 act or any rule or order validly promulgated by the commissioner
11 under authority of this act;

12 e. The licensee is conducting its business in an unsafe or unsound
13 manner;

14 f. The licensee is insolvent; for the purposes of this section, a
15 licensee shall be insolvent if: (1) the aggregate of its property at a fair
16 valuation, exclusive of any property which it may have conveyed,
17 transferred, concealed, removed or permitted to be concealed or
18 removed, with intent to defraud, hinder or delay its creditors, is not
19 sufficient in amount to pay its debts; or (2) the licensee is unable, by
20 its available assets or the honest use of credit, to pay its debts as they
21 become due;

22 g. The licensee has suspended payment of its obligations, has
23 made an assignment for the benefit of its creditors, or has admitted in
24 writing its inability to pay its debts as they become due;

25 h. The licensee has applied for an adjudication of bankruptcy,
26 reorganization, arrangement, or other relief under any bankruptcy;

27 i. The licensee refuses to permit the commissioner to make any
28 examination or investigation authorized by this act;

29 j. The licensee willfully fails to make any report required by this
30 act.

31 k. The licensee has willfully violated any provision of 31
32 C.F.R. §103.11 et seq.; or

33 l. The licensee has willfully violated any provision of P.L.1994,
34 c.121 (C.2C:21-23 et seq.).

35

36 17. Licensees desiring to conduct licensed activities through
37 authorized delegates shall authorize each delegate to operate pursuant
38 to an express written contract, which shall provide that the licensee
39 appoints the person as its delegate with authority to engage in the
40 activities of a money transmitter on behalf of the licensee.

41

42 18. a. An authorized delegate shall not make any fraudulent or
43 false statement or misrepresentation to a licensee or to the
44 commissioner.

45 b. All money transmission or sale or issuance of payment
46 instrument activities conducted by authorized delegates shall be strictly

1 in accordance with the licensee's written procedures to the authorized
2 delegate.

3 c. An authorized delegate shall remit all money owing to the
4 licensee in accordance with the terms of the contract between the
5 licensee and the authorized delegate. The failure of an authorized
6 delegate to remit all money owing to a licensee within the time
7 presented shall result in liability of the authorized delegate to the
8 licensee for three times the licensee's actual damages. The
9 commissioner shall have the discretion to set, by regulation, the
10 maximum remittance time.

11 d. An authorized delegate is deemed to consent to the
12 commissioner's inspection, with or without prior notice to the licensee
13 or authorized delegate, of the books and records of the authorized
14 delegate of the licensee whenever the commissioner has a reasonable
15 basis to believe that the licensee or authorized delegate is not in
16 compliance with this act; and

17 e. An authorized delegate is under a duty to act only as authorized
18 under the contract with the licensee and an authorized delegate who
19 exceeds its authority is subject to cancellation of its contract and
20 further disciplinary action by the commissioner.

21 f. All funds (less fees) received by an authorized delegate of a
22 licensee from the sale or delivery of a payment instrument issued by a
23 licensee or received by an authorized delegate for transmission shall,
24 from the time the funds are received by an authorized delegate until
25 that time when the funds or an equivalent amount are remitted by the
26 authorized delegate to the licensee, constitute trust funds owned by
27 and belonging to the licensee. If an authorized delegate commingles
28 any trust funds with any other funds or property owned or controlled
29 by the authorized delegate, all commingled proceeds and other
30 property shall be impressed with a trust in favor of the licensee in the
31 amount equal to the amount of the proceeds due the licensee.

32 g. An authorized delegate shall report to the licensee the theft or
33 loss of payment instruments within 24 hours from the time it knew or
34 should have known of that theft or loss.

35 h. Authorized delegates shall comply with the provisions of 31
36 C.F.R. §103.11 et seq. and P.L.1994, c.121 (C.2C:21-23 et seq.).

37 i. Authorized delegates shall conduct all business governed by this
38 act in the name of the licensee.

39

40 19. a. If, after notice and a hearing, the commissioner finds that
41 any authorized delegate of a licensee or any director, officer,
42 employee, or controlling person of that authorized delegate:

43 (1) has violated any provision of this act or of any rule or
44 regulation or order issued under this act;

45 (2) has engaged or participated in any unsafe or unsound act
46 with respect to the business of selling or issuing payment instruments

1 of the licensee or the business of money transmission; or

2 (3) has made or caused to be made in any application or report
3 filed with the commissioner or in any proceeding before the
4 commissioner, any statement which was at the time and in the
5 circumstances under which it was made, false or misleading with
6 respect to any material fact, or has omitted to state in any such
7 application or report any material fact which is required to be stated
8 therein,

9 the commissioner may issue an order, pursuant to the "Administrative
10 Procedure Act," P.L.1968, c.410 (c.52:14B-1 et. seq.) suspending or
11 barring the authorized delegate from continuing to be or becoming an
12 authorized delegate of any licensee during the period for which the
13 order is in effect. Upon issuance of an order, the licensee shall
14 terminate its relationship with the authorized delegate according to the
15 terms of the order.

16 b. (1) Any authorized delegate to whom an order is issued under
17 this section may apply to the commissioner to modify or rescind the
18 order. The commissioner shall not grant the application unless the
19 commissioner finds that it is in the public interest to do so and that it
20 is reasonable to believe that the person will, if and when the person is
21 permitted to resume being an authorized delegate of a licensee, comply
22 with all applicable provisions of this act and of any regulation and
23 order issued under this act.

24 (2) The right of any authorized delegate to whom an order is
25 issued under this section to petition for judicial review of that order
26 shall not be affected by the failure of that person to apply to the
27 commissioner to modify or rescind the order.

28

29 20. A licensee's responsibility to any person for a money
30 transmission conducted on that person's behalf by the licensee or the
31 licensee's authorized delegate shall be limited to the amount of money
32 transmitted or the face amount of the payment instrument purchased
33 and any fee, commission or other benefit paid to the licensee or the
34 licensee's authorized delegate for that service.

35

36 21. The provisions of the "Administrative Procedure Act,"
37 P.L.1968, c.410 (52:14B-1 et seq.) shall apply to any hearing afforded
38 pursuant to this act.

39

40 22. a. If, after notice and hearing, the commissioner finds that a
41 person has violated any provision of this act or a rule adopted under
42 this act, the commissioner may order the person to pay the
43 commissioner a civil penalty in an amount specified by the
44 commissioner, not to exceed \$5,000 for each violation. Each violation
45 shall constitute a separate offense and the penalty under this section
46 shall be in addition to a suspension or revocation of a license. No such

1 proceeding shall be initiated and no penalty shall be assessed pursuant
2 to this section until after that person has been notified in writing of the
3 nature of the violation and has been afforded a reasonable period of
4 time, as set forth in the notice, to correct the violation and has failed
5 to do so. The provisions of the "penalty enforcement law,"
6 N.J.S.2A:58-1 et seq., shall apply.

7 b. The commissioner, in the exercise of the commissioner's
8 reasonable judgment, is authorized to compromise, settle, and collect
9 civil penalties with any person for violations of any provision of this
10 act, or of any rule, regulation or order issued or promulgated pursuant
11 to this act.

12

13 23. a. If it appears to the commissioner that any person has
14 committed or is about to commit a violation of any provision of this
15 act or of any rule or order of the commissioner, the commissioner may
16 apply to the Superior Court for an order enjoining that person from
17 violating or continuing to violate this act or any rule, regulation or
18 order of the commissioner and for injunctive or other relief as the
19 nature of the case may require.

20 b. The commissioner may enter into consent orders at any time
21 with any person to resolve any matter arising under this act. A
22 consent order shall be signed by the person to whom it is issued or a
23 duly authorized representative, and shall indicate agreement to the
24 terms contained therein. A consent order need not constitute an
25 admission by any person that any provision of this act, or any rule,
26 regulation or order promulgated or issued thereunder has been
27 violated, nor need it constitute a finding by the commissioner that the
28 person has violated any provision of this act or any rule, regulation or
29 order promulgated or issued thereunder.

30 c. Notwithstanding the issuance of a consent order, the
31 commissioner may seek civil or criminal penalties or compromise civil
32 penalties concerning matters encompassed by the consent order, unless
33 the consent order by its terms expressly precludes the commissioner
34 from so doing.

35 d. The commissioner is authorized to exchange fingerprint data with
36 and receive criminal history information from the Federal Bureau of
37 Investigation and the New Jersey Division of State Police or any other
38 appropriate agency for use in performing background checks. The
39 commissioner is authorized to conduct additional background checks
40 the commissioner deems appropriate.

41

42 24. a. Any person who knowingly and willfully violates any
43 provision of this act for which a penalty is not specifically provided is
44 guilty of a crime of the fourth degree.

45 b. Any person who knowingly and willfully makes a material, false
46 statement in any document filed or required to be filed under this act

1 with the intent to deceive the recipient of the document is guilty of a
2 crime of the third degree.

3 c. Any person who knowingly and willfully engages in the
4 business of money transmission without a license as provided herein
5 shall be guilty of a crime of the third degree.

6 d. Any person who purposely or knowingly refuses to permit any
7 lawful investigation by the commissioner or the Attorney General shall
8 be guilty of a crime of the third degree.

9

10 25. The commissioner shall promulgate regulations pursuant to the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
12 necessary to effectuate the provisions of this act.

13

14 26. a. Any licensee, authorized delegate or other person who
15 engages in business activities that are regulated under this act, with
16 or without filing an application, is deemed to have done both of the
17 following:

18 (1) Consented to the jurisdiction of the courts of this State for
19 all actions arising under this act; and

20 (2) Appointed the commissioner as his lawful agent for the
21 purpose of accepting service of process in any action, suit or
22 proceeding that may arise under this act.

23 b. Within three business days after service of process upon the
24 commissioner, the commissioner shall transmit by certified mail copies
25 of all lawful process accepted by the commissioner as an agent to that
26 person at its last known address. Service of process shall be
27 considered complete three business days after the commissioner
28 deposits copies of the documents in the United States mail.

29

30 27. Every person engaged in activities within this State
31 encompassed by this act on the effective date of this act, except those
32 persons already licensed under chapter 15 of Title 17 of the Revised
33 Statutes or P.L.1964, c.273 (C.17:15B-1 et seq.), shall file an
34 application in accordance with the provisions of this act within 90 days
35 after the date this act becomes operative. A person licensed under
36 chapter 15 of Title 17 of the Revised Statutes or P.L.1964, c.273
37 (C.17:15B-1 et seq.), shall continue as a licensee under this act until
38 April 1, 1998, at which time, if the licensee intends to continue to
39 engage in activities regulated by this act, the licensee shall renew the
40 license as a licensee under the provisions of this act no later than April
41 1, 1998.

42

43 28. The following are repealed:

44 R.S.17:15-1 through R.S.17:15-10

45 P.L.1964, c.273 (C.17:15B-1 et seq.).

S306 INVERSO

21

1 through authorized delegates pursuant to an express written contract
2 which provides that the licensee appoints the person as its delegate
3 with authority to engage in the activities of a money transmitter on its
4 behalf.

5 The bill authorizes the commissioner to enforce the provisions of
6 the bill and upon notice and a hearing, issue an order suspending or
7 barring an authorized delegate from continuing to engage in the money
8 transmitting business. Authorized delegates have the right to apply to
9 have any order modified or rescinded.

10 The bill provides for the imposition of civil and criminal penalties
11 for a violation of any of its provisions.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 306

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Senate State Government, Banking and Financial Institutions Committee reports favorably and with committee amendments Senate Bill No. 306.

This bill, as amended, provides for the licensing and regulation of persons engaged in the business of money transmission. Under the bill the business of a money transmitter is defined as: a person who engages, either directly or through an authorized delegate, in the business of:

(1) the sale or issuance of payment instruments (i.e., money orders) for a fee, commission or other benefit;

(2) the receipt of money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit; or

(3) the receipt of money for obligors for the purpose of paying obligor's bills, invoices or accounts for a fee, commission or other benefit paid by the obligor (i.e., third party bill payers).

Currently only two of these activities are regulated: foreign money transmitters under R.S.17:15-1 et seq. and money order issuers under "The Check Selling Law," P.L.1964, c.273 (C.17:15B-1 et seq.); domestic money transmitters and third party bill payers are not regulated.

The bill restricts the business of money transmission to those licensed under the bill but provides an exception for federal and state departments and agencies (including the provision of electronic transfer of government benefits), bank holding companies, State or federally chartered banks, savings banks, savings and loan associations or credit unions or a person licensed as a debt adjuster. Except as provided specifically for a person licensed to engage only in the business of a foreign money transmitter, each person licensed as a money transmitter is required to have and maintain a net worth of \$100,000 plus an additional net worth amount of \$25,000 for each

location or authorized delegate through whom its business is conducted in this State, up to a maximum net worth amount of \$1,000,000, regardless of the total number of locations and authorized delegates. Each person licensed to engage only in the business of a foreign money transmitter is required to have and maintain a net worth of \$50,000 plus an additional net worth amount of \$25,000 for each location or authorized delegate through whom its business is conducted in this State, up to a maximum net worth amount of \$400,000, regardless of the total number of locations and authorized delegates. For persons currently licensed as foreign money remitters, the bill provides a phase in period to reach the net worth requirements; by July 1, 2001, each person licensed to engage only in the business of a foreign money transmitter has to have and maintain the full net worth amount required for that license under the bill.

The bill requires each application for a license as a money transmitter to be accompanied by a surety bond or similar security device acceptable to the Commissioner of Banking and Insurance in an amount set by the commissioner of not less than \$100,000 or more than \$1,000,000. For an application to engage only in the business of a foreign money transmitter, the bill establishes a graduated scale for the amount of a surety bond or similar security device, beginning at \$25,000 and increasing to \$100,000 depending on the annual volume of business of the licensee. For an annual volume of business in excess of \$15 million, the amount of the surety bond or other similar security device is to be set by the commissioner by regulation in an amount not less than \$100,000 and not in excess of \$1,000,000

For persons currently licensed as foreign money remitters, the bill also provides a phase in period for reaching the amount of the surety bond or other security device. Each person who wants to continue to engage in business in this State only as a foreign money remitter is required to have a surety bond or other similar security devices in the amount of \$25,000 by the first business day following 90 days after the effective date of the act. By July 1, 2001, each foreign money remitter is required to be in full compliance with the surety bond or other similar security device amount required in the bill.

Under the bill, a license is good for two years. The bill requires the commissioner to set a license fee, which is not greater than \$4,000 for that two-year period.

With respect to the supervisory and regulatory purposes of the Department of Banking and Insurance, each licensee is required to keep certain records for a period of three years, which are to be available to the commissioner for inspection and examination, whether in an office in this State or out-of-State. The licensee is to bear the cost of any examination.

Under the bill, a licensee is permitted to conduct licensed activities through authorized delegates pursuant to an express written contract which provides that the licensee appoints the person as its delegate with authority to engage in the activities of a money transmitter on its

behalf.

The bill authorizes the commissioner to enforce the provisions of the bill and upon notice and a hearing, issue an order suspending or barring an authorized delegate from continuing to engage in the money transmitting business. Authorized delegates have the right to apply to have any order modified or rescinded.

The bill provides that a foreign money remitter has to provide a compiled financial statement as part of its annual report instead of an audited financial statement, except that the commissioner, for good cause, may request that a foreign money remitter submit an audited financial statement.

The bill provides for the imposition of civil and criminal penalties for a violation of any of its provisions.

COMMITTEE AMENDMENTS

Amendments to the bill define a foreign money transmitter; provide for a different net worth and surety bond requirement for persons licensed to engage only in the business of a foreign money transmitter; provide a phase in period during which time a person licensed currently as a foreign money remitter is to meet the higher net worth and security device requirements to continue to engage in the business of a foreign money transmitter under the bill; provide that a foreign money transmitter is required to submit a compiled financial statement as part of its annual report and change the effective date of the bill.

This bill was prefiled for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

FISCAL NOTE

[First Reprint]

SENATE, No. 306

STATE OF NEW JERSEY

208th LEGISLATURE

DATED: APRIL 16, 1998

Senate Bill No. 306 (1R) of 1998 provides for the licensing and regulation of persons engaged in the business of money transmission, foreign and domestic money transmitters, sellers of money orders, and third party bill payors. Currently, only two of these activities are regulated: foreign money remitters under R.S.17:15-1 et seq., and sellers of money orders under "The Check Selling Law," P.L.1964, c.273 (C.17:15B-1 et seq.).

Under the bill, a license, which is valid for two years, may be issued to engage in foreign money transmission only or to engage in all four of the activities regulated under the bill. The bill requires the Commissioner of Banking and Insurance to set a license fee, which cannot exceed \$4,000, for that two-year period.

The bill also authorizes the commissioner to enforce the provisions of the bill and provides for the imposition of civil and criminal penalties for a violation of any of its provisions.

The Department of Banking and Insurance estimates that implementation of the bill will not impact negatively upon the licensing revenues of the Division of Banking, and could, depending upon the levels of fees adopted, result in an increase in the division's anticipated revenues.

Under current law, persons licensed as foreign money remitters and check sellers have already renewed their licenses in FY 1998 for the 1998-1999 period. The department anticipates revenues from these renewals to total \$148,000, of which half will be credited to FY 1998 and half to will be credited to FY 1999, due to the biennial fee structure. This estimate includes \$124,000 from the licensing of 124 foreign money remitter offices at \$1,000 per license and \$24,000 from the licensing of 20 check seller offices at \$1,200 per license.

The department estimates that those entities currently licensed as foreign money remitter would see an increase of \$200 per license which would become due upon their conversion to the new license, proposed in this bill. The department estimates that this would result in an additional \$13,600 in revenue in FY 1999.

Under the bill, delegates (agents) and locations of licensed entities

will not require licensure, but rather registration. The proposed statute provides for a registration fee of not less than \$25 per location (which includes delegates) and not more than a total of \$5,000 for all locations of an individual business.

The department assumes an additional \$1,400 in revenue from registrations of foreign money transmitter offices, based on information that 56 of the 124 foreign money remitter offices licensed under current law are branch offices subject to registration requirements under this bill. However, the OLS notes that the department already estimates receiving \$1,000 from each of these offices via licensure. To assume revenue from both licensure and registration for these 56 offices may overestimate the bill's effect on revenues, because only delegates or branch offices have to be registered under the bill.

Thus, under the bill, the department anticipates a minimum of \$15,000 in additional revenue (\$13,600 + \$1,400) between FY 1998 and FY 1999. However, the OLS also notes that, based on information received from the department, at least \$10,000 in additional revenue can be anticipated from registration of the branch offices of check sellers, which the department did not include in its estimate of total additional revenues under the bill. Moreover, with the addition of an unknown number of delegates/locations that will become subject to registration under this bill, as well as new entities requiring licensure as domestic money remitters and third party bill payors, the department anticipates that it will experience a modest increase in overall revenue in the balance of FY 1998 and FY 1999. Although the department contends that it can not make an accurate projection of renewals for the 2000-2001 period, the department believes that revenue from those renewals would equal or exceed revenue that is obtainable under the current law.

The department further projects that implementation of the bill will require the services of one clerical support position, one additional professional staff position, modification of its computer licensing system and the printing of new application and instructional materials relevant to the new license. Although the department does not provide a cost estimate for these items, it believes that the ability to raise license fees under this bill would allow the department to maintain a revenue neutral status.

The Office of Legislative Services concurs with the department's estimate, but notes that the expenses cited by the department may offset projected revenues.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

Office of the Governor
NEWS RELEASE

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RELEASE: May 1, 1998

Gov. Whitman Signs A-956, S-91, S-93 and S-465

Gov. Christie Whitman today signed the following pieces of legislation:

A-956, sponsored by Assembly Members Alan Augustine (R-Middlesex/Morris/Somerset/Union) and Neil Cohen (D-Union) and Senator Peter Inverso (R-Mercer/Middlesex), which provides for the licensing and regulation of money transmitters. Under current law, only foreign money transmitters and money order issuers are regulated. This new law will expand regulation to include domestic money transmitters and third party payers.

S-91, Senators Joseph Palaia (R-Monmouth) and Richard Codey (D- Essex) and Assembly Members Michael Arnone (R-Monmouth) and Claire Farragher (R-Monmouth), which expands worker's compensation coverage provided through New Jersey Horse Racing Injury Compensation Board to additional backstretch employees. Currently coverage is provided only to jockeys, jockey apprentices, exercise riders, drivers and driver-trainers.

S-93, sponsored by Senators Joseph Palaia (R-Monmouth) and Diane Allen (R-Burlington/Camden) and Assembly Members John Kelly (R- Bergen/Essex/Passaic) and Guy Talarico (R-Bergen), which provides that federal or state-funded remedial programs for nonpublic school students may be held on the premises of the nonpublic school. The new law is consistent with the U.S. Supreme Court's ruling in *Agostini v. Felton* that publicly funded programs which provide supplemental instruction to nonpublic students held on the premises of church or sectarian schools do not violate the separation between Church and State.

S-465, sponsored by Senator Martha Bark (R- Atlantic/Burlington/Camden) and Assembly Members Francis Bodine (R- Atlantic/Burlington/Camden) and Larry Chatzidakis (R- Atlantic/Burlington/Camden), which extends the expiration date of appropriation for State Transfer of Development Rights Bank administrative costs.

BODY