

UNIFORM MONEY SERVICES BUSINESS ACT (SELECTED SECTIONS)

Section 101. Short Title. This [Act] may be cited as the Uniform Money Services Business Act.

Section 102. Definitions. In this [Act]:

- (1) "Applicant" means a person filing an application for a license under this [Act].
- (2) "Authorized delegate" means a person designated by a licensee to provide money services on behalf of the licensee.
- (3) "Bank" means an institution organized under federal or state law that:
 - (A) accepts demand deposits or deposits that the depositor may withdraw for payment to third parties or others by check or other similar means and is engaged in the business of making commercial loans; or
 - (B) engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw for payments to third parties or others by check or similar means, does not accept any savings or time deposits less than \$100,000, maintains only one office that accepts deposits and does not engage in the business of making commercial loans.
- (4) "Check casher" means a person that engages in check cashing and receives at least \$500 compensation for check cashing during any 30-day period.
- (5) "Check cashing" means accepting a payment instrument in exchange for money delivered to the presenter of the instrument at the time and place of presentation without any agreement specifying when the payment instrument will be submitted for collection.
- (6) "Control" means:
 - (A) ownership, control of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or controlling person;
 - (B) controlling the election of a majority of directors, managers, trustees, or other persons exercising managerial authority of a licensee or controlling person; or
 - (C) direct or indirect exercise of a controlling influence over a licensee or controlling person, if the [superintendent], after notice and opportunity for hearing, so determines.
- (7) "Controlling person" means a person having control.
- (8) "Currency exchange" means exchanging money of one government for money of another government.
- (9) "Currency exchanger" means a person who engages in currency exchange.
- (10) "Engage in the business" means to engage for compensation more than 10 times in any twelve consecutive months in activities regulated under this [Act].
- (11) "Executive officer" means a licensee's president, chairman of the executive committee, chief financial officer, responsible individual, or other individual that performs similar functions.
- (12) "Licensee" means a person licensed under this [Act].
- (13) "Limited station" means private premises where a check casher is authorized to engage in check cashing solely for the employees of the particular employer or group of employers specified in its license application, for no more than two days of each week.
- (14) "Mobile location" means a vehicle or a movable facility where check cashing occurs.
- (15) "Money" means a medium of exchange that is authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.
- (16) "Money services " means money transmission, check cashing, or currency exchange.
- (17) "Money transmission" means the sale or issuance of a payment instrument, or engaging in receiving money for transmission, or transmitting money within the United States or to locations outside the United States.
- (18) "Outstanding," with respect to a payment instrument, means issued or sold by or for the licensee but not yet paid by or for the licensee.
- (19) "Payment instrument" means a check, draft, money order, traveler's check, stored-value instrument, or other device for the transmission or payment of money, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.
- (20) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a government; governmental subdivision, agency, or instrumentality; or public corporation.

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

(22) "Responsible individual" means an individual who is employed by a licensee and has principal active managerial authority over the provision of money services by the licensee in this State.

(23) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(24) "Stored-value instrument" means a card or other tangible object for the transmission or payment of money or other value which contains a microprocessor chip, magnetic stripe, or other means for the storage of information, which is prefunded, and of which the value is generally decreased with each use. The term does not include a card or other tangible object that is redeemable by the issuer in the issuer's goods or services.

(25) "[Superintendent]" means the [state superintendent of banks or other senior state regulator].

(26) "Unsafe or unsound practice" means a practice or conduct by a money transmitter that creates the likelihood of material loss, insolvency, or dissipation of assets of the money transmitter, or otherwise materially prejudices the interests of its customers.

Section 201. License Required.

(a) A person licensed under this [article] or who is an authorized delegate of a person licensed under this [article] may engage in money transmission.

(b) A person licensed under this [article] may also engage in check cashing without obtaining a separate license under [Article] 3 and currency exchange without obtaining a separate license under [Article] 4.

Section 202. Application for License.

(a) In this section, "material litigation" means litigation that, according to generally accepted accounting principles, is considered significant to an applicant's or licensee's financial condition.

(b) A person applying for a license under this [article] must do so in a writing, under oath, and in a form prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in the conduct of its business;

(2) the applicant's material litigation for the last five years;

(3) a description of any money services activities previously or presently engaged in by the applicant, and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates, and the locations in this State where the applicant and its authorized delegates propose to provide money transmission or other money services;

(5) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument, if applicable;

(6) the name and address of any clearing financial institutions through which the applicant's payment instruments will be payable;

(7) other information the [superintendent] reasonably requires with respect to the applicant.

(c) If an applicant is a corporation, limited liability company, or partnership, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded on a securities exchange;

(4) the legal and any fictitious name, business and residential addresses, and employment, for the past ten years, of each executive officer, manager, director, or controlling person of the applicant;

(5) material litigation and criminal convictions for the past ten years of each executive officer, and controlling person that is an individual, of the applicant;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the next preceding two years;

(7) a copy of the applicant's unconsolidated financial statements for the current year, whether audited or not, and, if available, for the next preceding two years;

(8) if the applicant is a publicly traded entity, a copy of the most recent 10-K report filed with the SEC;

(9) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, audited financial statements for the parent corporation for the current year or the parent corporation's most recent 10-K reports filed with the SEC; or

(B) a corporation publicly traded outside the United States, similar documentation filed with the regulator of the parent corporation's domicile outside the United States; and

(10) other information the [superintendent] reasonably requires.

(d) A nonrefundable application fee of [\$2,000] and a license fee of [\$2,000] must accompany an application for a license under this [article]. The license fee must be refunded if the application is denied.

(e) The [superintendent] may waive a requirement of subsections (a) through (c) or permit an applicant to submit substituted information in lieu of the required information.

Section 601. Authority to Conduct Examinations.

(a) The [superintendent] may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee.

(b) The [superintendent] may examine the licensee or its authorized delegate without having given notice, if the [superintendent] has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act],

(c) If the [superintendent] concludes that an on-site examination is necessary under subsection (a), the licensee shall pay the reasonable cost of the examination.

(d) Information obtained during an examination under this [Act] may be disclosed only as provided in Section 608.

Section 603. Reports.

(a) A licensee shall file with the [superintendent] within [15] business days any changes in information provided in a licensee's application and any other changes prescribed by the [superintendent].

(b) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, responsible individuals, and locations in this State. The licensee must state or include the name and street address of each location and authorized delegate.

(c) A licensee shall file a report with the [superintendent] within one business day after the licensee has reason to know of the occurrence any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership;

(3) the commencement of a proceeding to revoke or suspend its license in a State or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) an [indictment], prosecution, or conviction of the licensee or of an executive officer, director, or controlling person for a felony; or

(6) an [indictment], prosecution, or conviction of an authorized delegate for a felony.

Section 605. Books, Accounts, Documents, and Other Records.

(a) A licensee shall maintain books, accounts, documents, and other records necessary to determine the licensee's compliance with this [Act]. A licensee shall maintain the following for at least three years after the record is created:

(1) a record of each payment instrument sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments;

(5) records of each payment instrument paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other books, accounts, documents, and other records that may be prescribed by the [superintendent] by rule.

(b) The items specified in subsection (a) may be maintained in paper, photographic, electronic, or similar medium.

(c) Books, accounts, documents, and other records may be maintained outside this State if they are made accessible to the [superintendent] on [seven] business days' notice that is sent in a record.

(d) All books, accounts, documents, and other records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the [superintendent] pursuant to Section 601.

Section 701. Maintenance of Permissible Investments.

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

(b) The [superintendent], with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a United State bank or financial institution. The [superintendent] by rule may prescribe or by order allow other types of investments that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.

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

Section 702. Types of Permissible Investments.

(a) Except to the extent otherwise limited by the [superintendent] pursuant to Section 701, the following investments are permissible under Section 701:

(1) cash, a certificate of deposit, or other debt obligation of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813];

(2) a banker's acceptance or bill of exchange that is eligible for purchase by member banks of the Federal Reserve System;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

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

(5) receivables that are payable to a licensee from its authorized delegates pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of investments in receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not have at one time investments in receivables under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the SEC under the Investment Company Act of 1940 [15 U.S.C. Sections 80a-1 et. seq.], and the portfolio of which is restricted by the management company's investment policy to investments specified in paragraphs (1) through (4).

(b) The following investments are permissible under Section 701, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate investments under this paragraph do not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time have investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the SEC under the Investment Company Act of 1940, and the portfolio of which is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time have investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time have principal and interest outstanding under demand borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the [superintendent] determines to be permissible, to the extent specified by the [superintendent].

(c) The aggregate investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with Section 701.

Section 801. Orders to Cease and Desist; Powers of Suspension and Revocation.

(a) After notice and hearing, the [superintendent] may issue an order to cease and desist, suspend or revoke a license, place a licensee in receivership, or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee does not comply with this [Act] or a rule adopted or an order issued under this [Act];

(2) the licensee engages in fraud, misrepresentation, deceit, or gross negligence;

(3) an authorized delegate violates the Bank Secrecy Act, a state or federal anti-money laundering statute, or a rule adopted or an order issued under this [Act] as a result of the licensee's willful misconduct or willful blindness;

(4) the licensee is insolvent, suspends payment of its obligations, or makes an assignment for the benefit of its creditors;

(5) the licensee does not remove an authorized delegate after the [superintendent] issues and serves upon the licensee a final order setting forth a finding that the authorized delegate has violated this [Act];

(6) the competence, experience, character, or general fitness of the licensee, authorized delegate, controlling person, or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to engage in money services activities; or

(7) the licensee engages in an unsafe or unsound practice.

(b) In determining whether a person is engaging in an unsafe or unsound practice, the [superintendent] may consider the size and condition of the money transmitter, the magnitude of the loss, the gravity of the violation of this [Act], and the previous conduct of the person involved.

Section 805. Civil Penalties.

(a) A person that violates this [Act] or a rule adopted or an order issued under this [Act] may be assessed a civil penalty by [the superintendent] in an amount not to exceed [\$1,000] per day plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

(b) The [superintendent] may maintain an action in the [name of appropriate court or adjudicatory body] in the [county] in which a violation of this [Act] or of a rule adopted or an order issued under this [Act] is alleged to have occurred or in any other [county] in which venue is permitted under [reference to this State's venue statutes and rules] in the same manner as in other civil actions.

Section 806. Criminal Penalties.

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in an application, financial statement, book, document, account, customer receipt, report, or other record filed or required to be maintained under this [Act] or that intentionally makes a false entry or omits a material entry in such a record is guilty of a [reference to state classification] felony.

(b) A person that refuses to permit a lawful examination or investigation by the [superintendent] is guilty of a [reference to state classification] felony.

(c) A person that knowingly engages in any conduct for which a license is required under this [Act] without being licensed under this [Act] is guilty of a [reference to state classification] felony.