

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the licensing and supervision of money transmitters by the division of banks.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE LICENSING AND SUPERVISION OF MONEY TRANSMITTERS BY THE DIVISION OF BANKS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. Section 4 of chapter 167F of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by striking out section 4, and inserting in place thereof the following
3 section:--

4
5 Section 4. Any bank, or state-chartered credit union or any federally-chartered bank may
6 engage directly in the business of selling, issuing or registering checks or money orders, except
7 that any bank, state-chartered credit union or any federally-chartered bank may engage in such
8 business through agents who shall not be deemed to be branches of such banks, state-chartered
9 credit unions or federally-chartered banks.

10

11

12 SECTION 2. The General Laws are hereby amended by striking out chapter 169, as appearing in
13 the 2006 Official Edition, and inserting in place thereof the following chapter:--

14 **Chapter 169**

15 **Licensing and Supervision of Money Transmitters**

16 **Section 1: Definitions**

17 "Authorized agent," a person designated by a licensee under the provisions of this chapter to
18 sell or issue payment instruments or engage in the business of transmitting money on behalf of
19 a licensee at a location in the Commonwealth.

20

21 "Commissioner," the commissioner of banks.

22

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

28

29 "Controlling person," any person in control of a licensee.

30

31 “Electronic Instrument,” a card or other tangible object for the transmission or payment of
32 money which contains a microprocessor chip, magnetic stripe, or other means for the storage
33 of information, that is prefunded and for which the value is decremented upon each use, but
34 does not include a card or other tangible object that is redeemable by the issuer in the issuer’s
35 goods or services.

36

37

38 “Licensee,” a person licensed under this Chapter to engage in the business of money
39 transmission.

40

41 “Material litigation,” any litigation that, according to generally accepted accounting principles,
42 is deemed significant to an applicant’s or licensee’s financial health and would be required to
43 be referenced in that entity’s annual audited financial statements, report to shareholders or
44 similar documents.

45

46 “Money transmission,” the sale or issuance of payment instruments or stored value or engaging
47 in the business of receiving money for transmission or transmitting money within the United
48 States or to countries other than the United States by any and all means, including but not

49 limited to payment instrument, wire, facsimile or electronic transfer.

50

51 “Outstanding payment instrument,” any payment instrument issued by the licensee which has
52 been sold in the United States directly by the licensee or any payment instrument issued by the
53 licensee which has been sold by an authorized agent of the licensee in the United States, which
54 has been reported to the licensee as having been sold and which has not yet been paid by or for
55 the licensee.

56

57 “Payment instrument,” any electronic or written check, draft, money order, travelers check or
58 other electronic or written instrument or order for the transmission or payment of money, sold
59 or issued to one or more persons, whether or not such instrument is negotiable. The term
60 “payment instrument” does not include any credit card voucher, any letter of credit or any
61 instrument which is redeemable by the issuer in goods or services.

62

63 “Permissible Investments”

64 (a) Except to the extent otherwise limited by the commissioner pursuant to section 17, the
65 following are permissible investments:

- 66 1. cash, a certificate of deposit, or senior debt obligation of an insured depository institution,
67 as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813 (1994 &
68 Supp. V. 1999)];
- 69 2. banker’s acceptance or bill of exchange that is eligible for purchase upon endorsement by a

70 member bank of the Federal Reserve System and is eligible for purchase by a Federal
71 Reserve Bank;

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

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

78 5. receivables that are payable to a licensee from its authorized agents, in the ordinary course
79 of business, pursuant to contracts which are not past due or doubtful of collection if the
80 aggregate amount of receivables under this paragraph does not exceed 20 percent of the
81 total permissible investments of a licensee and the licensee does not hold at one time
82 receivables under this paragraph in any one person aggregating more than 10 percent of
83 the licensee's total permissible investments; and;

84 6. a share or a certificate issued by an open-end management investment company that is
85 registered with the United States Securities and Exchange Commission under the
86 Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and
87 whose portfolio is restricted by the management company's investment policy to
88 investments specified in paragraphs (1) through (4).

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

90 1. an interest-bearing bill, note, bond, or debenture of a person whose equity shares are
91 traded on a national securities exchange or on a national over-the-counter market, if the

92 aggregate of investments under this paragraph does not exceed 20 percent of the total
93 permissible investments of a licensee and the licensee does not at one time hold
94 investments under this paragraph in any one person aggregating more than 10 percent of
95 the licensee's total permissible investments;

96 2. a share of a person traded on a national securities exchange or a national over-the-counter
97 market or a share or a certificate issued by an open-end management investment company
98 that is registered with the United States Securities and Exchange Commission under the
99 Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and
100 whose portfolio is restricted by the management company's investment policy to shares of
101 a person traded on a national securities exchange or a national over-the-counter market, if
102 the aggregate of investments under this paragraph does not exceed 20 percent of the total
103 permissible investments of a licensee and the licensee does not at one time hold
104 investments in any one person aggregating more than 10 percent of the licensee's total
105 permissible investments;

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

113 4. any other investment the commissioner designates, to the extent specified by the

114 commissioner.

115 (c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total
116 permissible investments of a licensee calculated in accordance with section 17.

117

118 "Person," any individual, partnership, association, joint-stock association, trust, limited liability
119 company, limited liability partnership or corporation.

120

121 "Primary business," the principal business of the licensee as determined by the commissioner,
122 exclusive of any business conducted as an agent of the state lottery commission.

123

124 "Principal shareholder," any person or group of persons acting in concert who is the owner of
125 ten percent or more of any voting class of an applicant's stock.

126

127 "Remit," either to make direct payment of money to a licensee or its representatives authorized
128 to receive the money, or to deposit money in a bank, credit union or savings and loan
129 association or other similar financial institution in an account specified by the licensee.

130

131 "Stored value," monetary value that is evidenced by an electronic record.

132

133 **Section 2.** No person or entity shall engage in the business of money transmission without first
134 obtaining a license from the commissioner pursuant to this chapter. If a licensee intends to
135 carry on a business at more than one location, including through an authorized agent, such
136 licensee shall procure a license for each location where such business shall be conducted.

137

138 **Section 3.** Nothing in this chapter shall be construed to apply to:

139 (1) the United States or a department, agency, or instrumentality thereof;

140 (2) money transmission by the United States Postal Service or by a contractor on behalf of the
141 United States Postal Service;

142 (3) a State or a governmental subdivision, agency, or instrumentality thereof;

143 (4) a bank, as defined in section one of chapter one hundred and sixty-seven, a federally-
144 chartered bank as defined in section one of chapter 167F, a bank holding company, an
145 office of an international banking corporation, a branch of a foreign bank, a corporation
146 organized pursuant to the Bank Services Act, or a corporation organized under the Edge
147 Act under the laws of a State or the United States if the person does not issue, sell, or
148 provide payment instruments or stored value through an authorized agent that is not
149 such a person;

150 (5) electronic funds transfer of governmental benefits for a federal, state, or governmental
151 agency by a contractor on behalf of the United States or a department, agency, or
152 instrumentality thereof, or a State or governmental subdivision, agency, or
153 instrumentality thereof;

- 154 (6) a board of trade designated as a contract market under the Commodity Exchange Act or a
155 person that, in the ordinary course of business, provides clearance and settlement
156 services for a board of trade to the extent of its operation as or for such a board of trade;
- 157 (7) a registered futures commission merchant under the federal commodities laws to the
158 extent of its operation as such a merchant;
- 159 (8) a person that provides clearance or settlement services pursuant to a registration as a
160 clearing agency or an exemption from such registration granted under the federal
161 securities laws to the extent of its operation as such a provider;
- 162 (9) an operator of a payment system to the extent that it provides processing, clearing, or
163 settlement services, between or among persons excluded by this section, in connection
164 with wire transfers, credit card transactions, debit card transactions, stored-value
165 transactions, automated clearing house transfers, or similar funds transfers; or
- 166 (10) a person registered as a securities broker-dealer under federal or state securities laws to
167 the extent of its operation as such a broker-dealer.

168

169 **Section 4.** The commissioner may adopt, amend, or repeal rules and regulations, which may
170 include an adequate capitalization requirement for money transmitters to aid in the
171 administration and enforcement of this chapter. Such rules and regulations may specify the
172 supervision of operations and code of conduct of authorized agents.

173

174 **Section 5.** The application for a license shall be in a form prescribed by the commissioner and
175 shall contain the name and address or addresses where the business of the applicant is located
176 and if the applicant is a partnership, association, corporation, or other form of business
177 organization, the names and addresses of each member, director, principal officer thereof, and
178 any individual acting as a manager of an office location. Such application shall also include a
179 description of the activities of the applicant, in such detail and for such periods as the
180 commissioner may require, as well as such further information as the commissioner may
181 require. The commissioner may require a background investigation of each applicant for a
182 license to engage in the business of money transmission by means of fingerprint checks by the
183 criminal history systems board pursuant to section 172 of chapter 6, and the Federal Bureau of
184 Investigation for state and national criminal history record checks. If the applicant is a
185 partnership, association, corporation or other form of business organization, the commissioner
186 may require such background investigation by means of fingerprint checks on each member,
187 director, principal officer of such applicant, and any individual acting as a manager of an office
188 location. Receipt of criminal history record information by a private entity shall be
189 prohibited. Each application for a license shall be accompanied by an investigation
190 fee. Investigation and license fees shall be determined annually by the commissioner of
191 administration under section 3B of chapter 7. If a licensee intends to carry on a business at
192 more than one location, including authorized agents, such licensee shall procure a license for
193 each location where such business shall be conducted.

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197

198 Upon the filing of an application for a license, if the commissioner finds that the financial responsibility,
199 character, reputation, integrity and general fitness of the applicant, and of the partners or members
200 thereof if the applicant is a partnership or association, and of the officers, directors and principal
201 employees if the applicant is a corporation, are such as to warrant belief that the business will be
202 operated honestly, fairly, soundly and efficiently in the public interest consistent with the purposes of
203 this chapter, he shall thereupon issue the applicant a license to engage in the business of money
204 transmission. If the commissioner shall not so find or, (a) the applicant made a false statement of a
205 material fact in the application for a license; (b) an officer, director or member of the applicant
206 business, including a proposed authorized agent, has, within ten years prior to the filing of the
207 application, been (i) convicted of or pleaded nolo contendere to a felony, or (ii) committed an
208 act involving fraud or deceit, which act is substantially related to the qualifications, functions or
209 duties of a person engaged in the business of money transmission; (c) the applicant violated
210 any of the provisions of this chapter or regulations promulgated hereunder, any similar
211 regulatory scheme of another jurisdiction, or any other law applicable to the conduct of the
212 business sought to be licensed; (d) a licensee or authorized agent of a licensee located at the
213 address at which the applicant intends to operate his business has had any license issued by the
214 commissioner suspended or revoked within six months of the date of the new application; he
215 shall not issue a license and he shall notify the applicant of the denial. Within twenty days thereafter, he
216 shall enter upon his records a written decision and findings containing the reasons supporting the denial

217 and shall forthwith give written notice thereof by registered mail to the applicant. Within thirty days
218 after the date of such notice, the applicant may appeal from such denial to the superior court for Suffolk
219 county, sitting in equity. The court shall hear all pertinent evidence and determine the facts and upon
220 the facts as so determined, review said denial and, as justice and equity may require, affirm the same or
221 order the commissioner to issue such license.

222

223 **Section 6.** Each license shall state the address at which the business is to be conducted and, if
224 an authorized agent, the appropriate identification thereof, and shall state fully the name of the
225 licensee. Immediately upon receipt, the licensee or authorized agent shall cause a copy of such
226 license to be conspicuously displayed in the place of business of the licensee or the authorized
227 agent. Such copies for authorized agents may be obtained at a reasonable cost, as determined
228 by the commissioner.

229

230 Such license shall not be transferable or assignable and shall expire annually at such time as
231 determined by the commissioner. A change of location or closing of the place of business of
232 the licensee at the address stated on the license, including an authorized agent, shall require
233 prior approval of the commissioner. A request for such relocation shall be in writing setting
234 forth the reasons therefor and shall be accompanied by a relocation investigation fee to be
235 determined annually by the commissioner of administration under the provisions of section
236 three B of chapter seven.

237

238 If there shall be any change among the officers, partners or directors of any licensee or
239 authorized agent, the licensee shall forthwith notify the commissioner of the name, address
240 and occupation of each new officer, partner, director, or authorized agent and provide such
241 other information as the commissioner may require.

242

243 **Section 7.** All money received for transmission by any licensee shall be forwarded to the
244 person to whom the same is directed within seven days following receipt thereof. Receipts
245 given for deposits of money received for transmission to a foreign country shall be on forms
246 approved by the commissioner.

247

248 **Section 8.** The commissioner may suspend or revoke a license issued pursuant to this chapter if
249 he finds that:

250

251 (a) the licensee or an authorized agent has violated a provision of this chapter or any rule or
252 regulation adopted hereunder or any other law applicable to the conduct of its business; or

253

254 (b) a fact or condition exists which, if it had existed at the time of the original application for
255 such license, would have warranted said commissioner in refusing to issue such license.

256

257 Except as provided in subsection (b) of section nine , no license shall be revoked or suspended
258 except after notice and hearing pursuant to chapter thirty A.

259

260 A licensee may surrender a license by delivering to the commissioner written notice that it
261 hereby surrenders such license, but such surrender shall not affect the civil or criminal liability
262 of such licensee for acts committed before such surrender.

263

264 No revocation, suspension or surrender of a license shall impair or affect the obligation of any
265 preexisting lawful contract between the licensee, either directly or through an authorized
266 agent, and any person.

267

268 In lieu of suspension or revocation of a license issued hereunder, the commissioner may fine a
269 licensee up to a maximum of five hundred dollars per day for each violation.

270

271 **Section 9.** (a) If the commissioner determines, after giving notice of and opportunity for a
272 hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
273 violation of a provision of this chapter or a rule, regulation or order adopted hereunder, said
274 commissioner may order such licensee to cease and desist from such unlawful act or practice
275 and take such affirmative action as in his judgment will effect the purposes of this chapter.

276

277 (b) If the commissioner makes written findings of fact that the public interest will be irreparably
278 harmed by a delay in issuing an order under subsection (a) he may issue a temporary cease and
279 desist order. Upon the entry of a temporary cease and desist order, the commissioner shall
280 promptly notify, in writing, the licensee affected thereby that such order has been so entered,
281 the reasons therefor, and that within twenty days after the receipt of a written request for a
282 hearing from such licensee, the matter will be scheduled for such hearing to determine
283 whether or not such temporary order shall become permanent and final. If no such hearing is
284 requested and none is ordered by the commissioner, the order shall remain in effect until it is
285 modified or vacated by the commissioner. If a hearing is requested or ordered, the
286 commissioner, after giving notice of and opportunity for a hearing to the licensee subject to
287 such order, shall, by written finding of facts and conclusions of law, vacate, modify or issue a
288 permanent cease and desist order.

289

290 (c) No order under this section, except an order issued pursuant to subsection (b), may be
291 entered without prior notice and opportunity for a hearing. The commissioner may vacate or
292 modify an order under this section upon a finding that the conditions which required such
293 order have changed and that it is in the public interest to vacate or modify such order.

294

295 An order issued pursuant to this section shall be subject to review as provided in chapter thirty

296 A.

297

298 **Section 10.** A licensee shall, when directed by the commissioner, permit the commissioner or
299 his duly authorized representative to inspect its records and evidence of compliance with this
300 chapter or any rule and regulation issued thereunder and with any other law, rule and regulation
301 applicable to the conduct of its business. The commissioner shall preserve a full record of each
302 such examination of a licensee including a statement of its condition. All records of
303 investigations and reports of examinations by the commissioner, including workpapers,
304 information derived from such reports or responses to such reports, and any copies thereof in the
305 possession of any licensee under the supervision of the commissioner, shall be confidential and
306 privileged communications, shall not be subject to subpoena and shall not be a public record
307 under clause twenty-sixth of section 7 of chapter 4. For the purpose of this paragraph, records of
308 investigation and reports of examinations shall include records of investigation and reports of
309 examinations conducted by a financial regulatory agency of the federal government and any
310 other state, and of any foreign government which are considered confidential by such agency or
311 foreign government and which are in possession of the commissioner. In any proceeding before a
312 court, the court may issue a protective order to seal the record protecting the confidentiality of
313 any such record, and other than any such record on file with the court or filed in connection with
314 the court proceeding, and the court may exclude the public from any portion of a proceeding at
315 which any such record may be disclosed. Copies of such reports of examination shall be
316 furnished to a licensee for its use only and shall not be exhibited to any other person,
317 organization or agency without prior written approval by the commissioner. The commissioner
318 may, in his discretion, furnish to regulatory agencies of the federal government, of other states,
319 or of foreign countries, and any law enforcement agency, such information, reports, inspections
320 and statements relating to the licensees under his supervision.

321

322 The commissioner, or his examiners or such others of his assistants as he may designate,
323 may summon the directors, officers or agents of a licensee, or any other witnesses, and examine
324 them relative to the affairs, transactions and condition of the licensee, and, for that purpose, may

325 administer oaths. Whoever, without justifiable cause, refuses to appear and testify when so
326 required or obstructs the person making such examination in the performance of his duty, shall
327 be punished by a fine of not more than one thousand dollars or by imprisonment for not more
328 than one year.

329

330 **Section 11.** The commissioner, if he has reason to believe that a person other than a licensee
331 has violated any of the provisions of this chapter, shall be authorized to make such
332 investigations as he shall deem necessary and may examine such other person and shall compel
333 the production of all relevant books, records, accounts and documents.

334

335

336 **Section 12.** Each licensee shall annually, on or before a date to be determined by the
337 commissioner, file a report with the commissioner containing such information as said
338 commissioner may require concerning the business and operations during the preceding
339 calendar year. A licensee neglecting to file such report or failing to amend the same within
340 fifteen days of notice from said commissioner directing the same shall, unless such neglect or
341 failure is due to justifiable cause and not due to willful neglect, pay to the commonwealth fifty
342 dollars for each day during which such neglect or failure continues.

343

344 A licensee shall keep and use such business records in such form and at such location as said
345 commissioner shall, by regulation, determine, which shall enable said commissioner to

346 determine whether such licensee is complying with the provisions of this chapter and any rules
347 or regulations promulgated hereunder by said commissioner and any other law, rule or
348 regulation applicable to the conduct of the business for which it is licensed under this chapter.
349 Such regulations may contain provisions for the suspension or revocation of licenses for
350 violations hereof and for such records to be recorded, copied or reproduced by photographic,
351 photostatic, microfilm, microcard, miniature photographic, electronic, including, but not limited
352 to, optical imaging, or other process which accurately reproduces or forms a durable medium
353 for reproducing the original record or document or in any other form or manner authorized by
354 the commissioner; provided, however, that nothing in this section shall be construed to permit
355 any such licensee to destroy original records or documents. Each such licensee shall preserve
356 all such business records for as long a period as the commissioner shall prescribe by regulation.
357 Notwithstanding the provisions of any general or special law or the Massachusetts Rules of Civil
358 Procedure to the contrary, service of a subpoena for business records upon a licensee,
359 delivered to an office of such licensee located within the commonwealth shall be deemed to
360 have been served at the location, whether within or outside the commonwealth, where the
361 original business records or documents are kept or maintained.

362

363 **Section 13.** The commissioner or an aggrieved party may enforce the provisions of this
364 chapter, or restrain any violations thereof, by filing a civil action in a court of competent
365 jurisdiction. A violation of this chapter or a rule or regulation adopted hereunder, shall
366 constitute a violation of chapter ninety-three A.

367

368 **Section 14.** Whoever violates any provision of this chapter or any rule or regulation made
369 thereunder by the commissioner shall be punished by a fine of not more than five thousand
370 dollars or by imprisonment in state prison for not more than five years, or both. Each day a
371 violation continues shall be deemed a separate offense. The penalty provision of this section
372 shall be in addition to, and not in lieu of, any other provision of law applicable to a licensee or
373 other person for violating section two or any rule or regulation made thereunder.

374

375 **Section 15.** (a) Whenever the commissioner finds that any licensee or exempt person under
376 section two of this chapter has violated any provision of this chapter or any rule or regulation
377 adopted thereunder, or any other law of the Commonwealth applicable to the conduct of the
378 business of money transmission, the commissioner may, by order, in addition to any other
379 action authorized under this chapter or any rule or regulation made thereunder, impose a
380 penalty upon such person which shall not exceed five thousand dollars for each violation, up to
381 a maximum of one hundred thousand dollars for such violation plus the costs of investigation.
382 The commissioner may impose a penalty which shall not exceed five thousand dollars for each
383 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
384 licensee or exempt person under section two of this chapter, plus the costs of investigation.

385

386 (b) Nothing in this section shall limit the right of any individual or entity who has been injured
387 as a result of any violation of this chapter by a licensee, or any person other than a licensee or
388 exempt person under section two of this chapter, to bring an action to recover damages or
389 restitution in a court of competent jurisdiction.

390

391 (c) Any findings or order issued by the commissioner pursuant to this section shall be subject to
392 review as provided in chapter thirty A.

393

394 **Section 16.** (a) Whenever the commissioner determines that any person has, directly or
395 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
396 applicable to the conduct of the business of money transmission, or any order issued by the
397 commissioner under this chapter or any written agreement entered between such licensee and
398 the commissioner, the commissioner may serve upon such person a written notice of intention:

399 (1) to prohibit such person from performing in the capacity of a principal employee on
400 behalf of any licensee for such period of time that the commissioner deems necessary;

401 (2) to prohibit the person from applying for or obtaining a license from the
402 commissioner for a period up to thirty-six months following the effective date of an
403 order issued under subsection (b) or (c); or

404 (3) to prohibit such person from any further participation, in any manner, in the conduct
405 of the affairs of a money transmitter in Massachusetts or to prohibit such person from

406 being employed by, an authorized agent of, or operating on behalf of a licensee under this
407 chapter or any other business which requires a license from the commissioner.

408

409 (b) A written notice issued under subsection (a) shall contain a written statement of the facts
410 that support the prohibition and shall give notice of an opportunity for a hearing to be held
411 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of
412 service upon the commissioner of such request for a hearing. If such person fails to submit
413 a request for a hearing within twenty days of service of notice under subsection (a), or
414 otherwise fails to appear in person or by a duly authorized representative, such party shall
415 be deemed to have consented to the issuance of an order of such prohibition in accordance
416 with the notice.

417

418 (c) In the event of such consent under subsection (b), or if after a hearing the commissioner
419 finds that any of the grounds specified in such notice have been established, the
420 commissioner may issue an order of prohibition in accordance with subsection (a) as the
421 commissioner finds appropriate.

422

423 (d) An order issued under subsection (b) or (c) shall be effective upon service upon the person.
424 The commissioner shall also serve a copy of the order upon the licensee of which the
425 person is an employee or on whose behalf the person is performing. The order shall remain

426 in effect and enforceable until it is modified, terminated, suspended, or set aside by the
427 commissioner or a court of competent jurisdiction.

428

429 (e) Except as consented to in writing by the commissioner, any person who, pursuant to an
430 order issued under subsection (b) or (c), has been prohibited from participating in whole or
431 in part in the conduct of the affairs of a money transmitter in Massachusetts may not, while
432 such order is in effect, continue or commence to perform in the capacity of a principal
433 employee, or otherwise participate in any manner, if so prohibited by order of the
434 commissioner, in the conduct of the affairs of:

435

436 (1) any licensee under this chapter;

437 (2) any other business which requires a license from the commissioner; or

438 (3) any bank, as defined under section one of chapter one hundred sixty seven,
439 or any subsidiary thereof.

440

441 **Section 17.** (a) Except as otherwise provided in subsection (b), a surety bond, letter of
442 credit, or other similar security acceptable to the commissioner in the amount of \$50,000 plus
443 \$10,000 per location, not exceeding a total addition of \$450,000, must accompany an
444 application for a license.

445 (b) Security must be in a form satisfactory to the commissioner, payable to the Commonwealth,
446 and delivered to the state treasurer for the benefit of any claimant against the licensee to

447 secure the faithful performance of the obligations of the licensee with respect to money
448 transmission. The securities deposited with the state treasurer as herein provided and the
449 money which in case of breach of the bond shall be paid by any licensee or surety thereon,
450 shall constitute a trust fund for the benefit of such persons as shall deposit money with the
451 licensee or authorized agent for transmission and such beneficiaries shall be entitled to an
452 absolute preference as to such money or securities over all general creditors of the licensee.

453 (c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A
454 claimant against a licensee may maintain an action on the bond, or the commissioner may
455 maintain an action on behalf of the claimant.

456 (d) A surety bond must cover claims for so long as the commissioner specifies, but for at least
457 five years after the licensee ceases to provide money services in this State. However, the
458 commissioner may permit the amount of security to be reduced or eliminated before the
459 expiration of that time to the extent the amount of the licensee's payment instruments or
460 stored-value obligations outstanding in the Commonwealth is reduced. The commissioner
461 may permit a licensee to substitute another form of security acceptable to the commissioner
462 for the security effective at the time the licensee ceases to provide money services in the
463 Commonwealth.

464 (e) In lieu of the security prescribed in this section, an applicant for a license or a licensee may
465 provide security in a form prescribed by the commissioner.

466 (f) The commissioner may increase the amount of security required if the financial condition of a
467 licensee so requires, as evidenced by reduction of net worth, financial losses, or other
468 relevant criteria.

469

470 **Section 18. Authorized agents.**

471

472 (a) A licensee engaged in the business of money transmission who intends to conduct licensed
473 activities through the use of authorized agents shall submit the names and addresses of such
474 persons listed in the original application to the commissioner for his approval. Upon the
475 commissioner's approval, a licensee may authorize any such authorized agent to conduct
476 business as the agent for said licensee at the address approved by the commissioner pursuant
477 to an express written contract between the parties detailing the duties and responsibilities of
478 such authorized agent and approved by the commissioner. Additional authorized agents shall
479 not be appointed without the prior written approval of the commissioner, and a licensee shall
480 notify the commissioner within one business day of the termination of any authorized agent.

481 (b) A contract between a licensee and an authorized agent must require the authorized
482 agent to operate in full compliance with this chapter. The licensee shall furnish in a record to
483 each authorized agent policies and procedures sufficient to permit compliance with this
484 chapter.

485 (c) An authorized agent shall remit all money owing to the licensee in accordance with the terms
486 of the contract between the licensee and the authorized agent.

487 (d) If a license is suspended or revoked or a licensee does not renew its license, the
488 commissioner shall notify all authorized agents of the licensee whose names are in a record
489 filed with the commissioner of the suspension, revocation, or non-renewal. After notice is sent
490 or publication is made, an authorized agent shall immediately cease to transmit money as an
491 agent of the licensee.

492 (e) An authorized agent may not provide money transmission services outside the scope of
493 activity permissible under the contract between the authorized agent and the licensee.

494

495 **Section 19. Permissible investments.**

496

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

501 (b) The commissioner, with respect to any licensees, may limit the extent to which a
502 type of investment within a class of permissible investments may be considered a permissible
503 investment, except for money and certificates of deposit issued by a bank. The commissioner
504 by rule may prescribe or by order allow other types of investments that the commissioner
505 determines to have a safety standard substantially equivalent to other permissible investments.

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

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