

[First Reprint]

ASSEMBLY, No. 2459

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 4, 2004

Sponsored by:

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Assemblyman NEIL M. COHEN

District 20 (Union)

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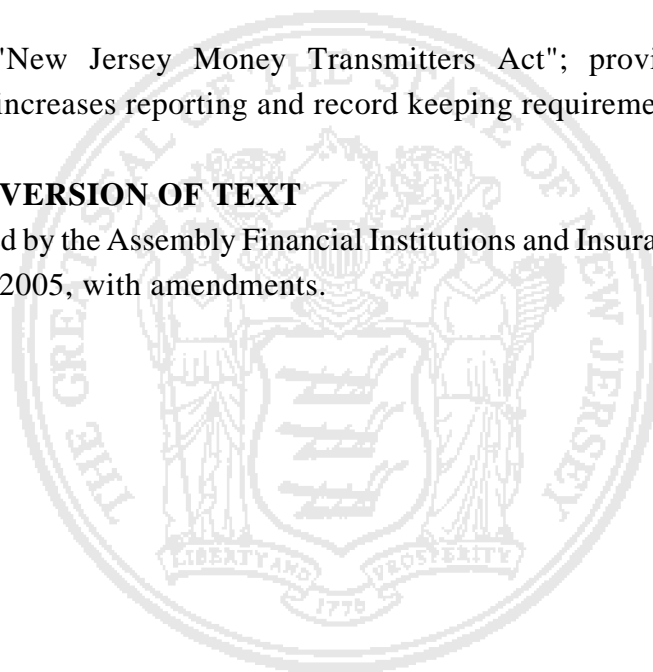
Assemblyman Manzo

SYNOPSIS

Revises "New Jersey Money Transmitters Act"; provides consumer protections; increases reporting and record keeping requirements.

CURRENT VERSION OF TEXT

As reported by the Assembly Financial Institutions and Insurance Committee on March 1, 2005, with amendments.



(Sponsorship Updated As Of: 3/2/2005)

1 AN ACT concerning money transmitters and amending and
2 supplementing P.L.1998, c.14.

3

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

6

7 1. Section 2 of P.L.1998, c.14 (C.17:15C-2) is amended to read as
8 follows:

9 2. As used in this act:

10 "Applicant" means a person filing an application for a license under
11 this act.

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

16 "Commissioner" means the Commissioner of Banking and
17 Insurance.

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

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

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

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

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

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

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

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

42 "Material litigation" means any litigation that, according to

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 AFI committee amendments adopted March 1, 2005.

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

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

9 "Money transmitter" means a person who engages in this State in
10 the business of:

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

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

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

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

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

34 "Permissible investments" means:

35 (1) cash;

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

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

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

44 (5) investment securities that are obligations of the United States,
45 its agencies or instrumentalities, or obligations that are guaranteed
46 fully as to principal and interest by the United States, or any

1 obligations of any state, municipality or any political subdivision
2 thereof which is rated in one of the three highest rating categories by
3 a nationally recognized statistical rating organization;

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

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

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

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

17 "Publicly traded corporation" means any corporation or other legal
18 entity, except a natural person, which:

19 (1) Has one or more classes of security registered pursuant to
20 section 12 of the Securities Exchange Act of 1934, (15 U.S.C. s. 78l.);

21 (2) Is an issuer subject to section 15(d) of the Securities Exchange
22 Act of 1934, (15 U.S.C. s. 78o.); or

23 (3) Has one or more classes of securities traded in any open market
24 in any foreign jurisdiction or regulated pursuant to a statute of any
25 foreign jurisdiction which the commissioner determines to be
26 substantially similar to the statutes referred to in a. or b. above.

27 (cf: P.L.1998, c.14, s.2)

28

29 2. Section 4 of P.L.1998, c.14 (C.17:15C-4) is amended to read as
30 follows:

31 4. a. No person, other than a person exempt from the provisions
32 of this act pursuant to section 3, shall engage in the business of money
33 transmission without a license as provided in this act. A licensee shall
34 prominently display its license in its principal place of business.

35 b. A licensee may conduct its business in this State ¹[at a branch
36 office or offices]¹ at one or more locations, directly or indirectly
37 owned, or through one or more authorized delegates, or both,
38 pursuant to the [single] license granted to the licensee under this act.

39 ¹[c. The commissioner shall authorize a licensee, pursuant to an
40 application approved by the commissioner, to establish and operate a
41 branch office or offices at which may be conducted all of the business
42 which may be conducted at the principal office if:

43 (1) the licensee provides the name of the person who will manage
44 the branch office;

45 (2) the licensee has paid a branch office application fee and a
46 branch office application license fee, as specified by regulation;

1 (3) the licensee has submitted proof, as required pursuant to
2 section 12 of P.L.1998, c.14 (C.17:15C-12), that there is sufficient net
3 worth for the operation of the branch office;

4 (4) the site of the branch office has been approved by the
5 commissioner and the commissioner has determined that the applicant
6 or licensee has the necessary equipment to record transactions and
7 maintain records as required by P.L.1998, c.14 (C.17:15C-1 et seq.);
8 and

9 (5) the licensee or applicant has met any additional conditions
10 which the commissioner may require by regulation.

11 d. If an office or branch office will, in the normal course of
12 business, transmit to an existing office or branch office in the same
13 county, the office or branch office shall not be located within 2,500
14 feet of an existing office or branch office, that distance being measured
15 as the radius of a circle with the entrance to the existing office or
16 branch office considered the center point from which the radius is
17 measured.]¹

18 (cf: P.L.1998, c.14, s.4)

19
20 3. Section 7 of P.L.1998, c.14 (C.17:15C-7) is amended to read as
21 follows:

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

25 a. For all applicants:

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

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

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

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

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

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

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

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

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

- 1 (10) A list identifying each country to which an applicant proposes
2 to transmit money or from which an applicant proposes to receive
3 money transmissions;
- 4 (11) Federal tax identification number; ~~[and]~~ ¹and¹
- 5 (12) Non-refundable application fee as prescribed by regulation by
6 the commissioner in an amount not to exceed \$1,000 ¹ [;
- 7 (13) The name, business and residence address, social security
8 number, date of birth and employment history for the past five years
9 of each of the applicant's employees that are actively engaged in the
10 business of money transmitting;
- 11 (14) The name, business and residence address, social security
12 number, date of birth and employment history for the past five years
13 of the employees of each of the applicant's authorized delegates;
- 14 (15) A statement that the applicant has, at a financial institution,
15 one dedicated bank account which will be used solely for the
16 applicant's money transmitter business, and the name and address of
17 the financial institution where the account is held; and
- 18 (16) A copy of the applicant's registration with the Financial
19 Crimes Enforcement Network (FinCEN) as a money services business,
20 pursuant to 31 C.F.R. s.103.11 et. seq.] ¹.
- 21 b. If the applicant is a corporation, the applicant shall also provide:
 - 22 (1) The date of the applicant's incorporation and state of
23 incorporation;
 - 24 (2) A certificate of good standing from the state in which the
25 applicant was incorporated;
 - 26 (3) A description of the corporate structure of the applicant,
27 including the identity of any parent or subsidiary of the applicant, and
28 the disclosure of whether any parent or subsidiary is publicly traded on
29 any stock exchange;
 - 30 (4) The name, business and residence address, social security
31 number, date of birth and employment history for the past five years
32 of each of the applicant's executive officers and of each officer or
33 manager who will be in charge of the applicant's activities to be
34 licensed under this act;
 - 35 (5) The name, business and residence address, social security
36 number, date of birth and employment history for the period five years
37 prior to the date of the application of each key shareholder of the
38 applicant;
 - 39 (6) The history, if any, of material litigation and criminal
40 convictions for the five-year period prior to the date of the application
41 of every executive officer or key shareholder of the applicant;
 - 42 (7) A copy of the applicant's most recent audited financial
43 statements (including balance sheet, statement of income or loss,
44 statement of changes in shareholder equity and statement of changes
45 in financial position) prepared by a certified public accountant or
46 public accountant in good standing and, if available, the applicant's

1 audited financial statements for the immediately preceding three-year
2 period. However, if the applicant is a wholly owned subsidiary of
3 another corporation, the applicant may submit either the parent
4 corporation's consolidated audited financial statements for the current
5 year and for the immediately preceding three-year period or the parent
6 corporation's Form 10-K reports filed with the Securities and
7 Exchange Commission for the prior three years in lieu of the
8 applicant's financial statements. If the applicant is a wholly owned
9 subsidiary of a corporation having its principal place of business
10 outside the United States, similar documentation filed with the parent
11 corporation's non-United States regulator may be submitted to satisfy
12 this provision;

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

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

22 c. If the applicant is not a corporation, the applicant shall also
23 provide:

24 (1) The name, business and residence address, personal financial
25 statement and employment history for the past five years, social
26 security number, date of birth, and fingerprints of each principal of the
27 applicant and the name, business and residence address, employment
28 history for the past five years, social security number, date of birth,
29 and fingerprints of any other persons who will be in charge of the
30 applicant's activities to be licensed under this act;

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

33 (3) The history, if any, of material litigation and criminal
34 convictions for the five-year period prior to the date of the application
35 for each individual having any ownership interest in the applicant and
36 each individual who exercises supervisory responsibility with respect
37 to the applicant's activities;

38 (4) Copies of the applicant's audited financial statements (including
39 balance sheet, statement of income or loss, and statement of changes
40 in financial position) prepared by a certified public accountant or
41 public accountant in good standing for the current year and, if
42 available, for the immediately preceding two-year period; and

43 (5) Alien registration information, if applicable.

44 d. Such other information as the commissioner may require by
45 regulation.

46 (cf: P.L.1998, c.14, s.7)

1 4. Section 9 of P.L.1998, c.14 (C.17:15C-9) is amended to read as
2 follows:

3 9. a. Upon the filing of a complete application, in the case of an
4 initial application, or the filing of a complete biennial renewal
5 application, the commissioner shall investigate the financial condition
6 and responsibility, financial and business experience, character and
7 general fitness of the applicant for an initial license or a renewal
8 license. The commissioner may conduct an on-site investigation of the
9 applicant for an initial license, the reasonable cost of which shall be
10 borne by the applicant. If the commissioner finds that the applicant's
11 business will be conducted honestly, fairly and in a manner
12 commanding the confidence and trust of the community and that the
13 applicant has fulfilled the requirements imposed by this act and has
14 paid the required license fee, the commissioner shall issue a license to
15 the applicant authorizing the applicant to engage in the licensed
16 activities in this State. If these requirements have not been met, the
17 commissioner shall deny the application in writing, setting forth the
18 reasons for the denial.

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

22 c. The license fee for each two-year period, or any part thereof,
23 shall be in an amount prescribed by the commissioner by rule or
24 regulation, not to exceed \$4,000. The two-year license period shall be
25 set by the commissioner by rule or regulation. A license shall run from
26 the date of issuance to the end of the biennial period. If the initial
27 license is issued in the second year of the biennial licensing period, the
28 license fee shall be in an amount not to exceed \$2,000.

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

32 e. The licensee shall submit a biennial fee to register locations in
33 the State. The fee shall be established by the commissioner by
34 regulation in an amount which is not less than \$25 per location in the
35 State but which shall not ¹[to]¹ exceed a maximum amount of \$5,000
36 for all locations.

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

42 g. If the licensed name or licensed business address is changed, the
43 licensee shall notify the commissioner in writing of the change within
44 10 days.

45 ¹[h. Except as to licensees that are publicly traded corporations,
46 each director, key shareholder, officer, owner, partner and manager of

1 a licensee, and each employee actively engaged in the money
2 transmitting business of the licensee, shall submit to the commissioner
3 the applicant's name, address, fingerprints and written consent for a
4 criminal history record background check to be performed. The
5 commissioner is authorized to exchange fingerprint data with and
6 receive criminal history record information from the State Bureau of
7 Identification in the Division of State Police and the Federal Bureau
8 of Investigation, consistent with applicable State and federal laws,
9 rules and regulations, for the purposes of facilitating determinations
10 concerning licensure eligibility. The applicant shall bear the cost for
11 the criminal history record background check, including all costs of
12 administering and processing the check. The Division of State Police
13 shall promptly notify the commissioner in the event a current holder of
14 a license or applicant or any person who was the subject of a criminal
15 history record background check pursuant to this subsection, is
16 arrested for a crime or offense in this State after the date the
17 background check was performed.]¹

18 (cf: P.L.1998, c.14, s.9)

19

20 5. Section 10 of P.L.1998, c.14 (C.17:15C-10) is amended to read
21 as follows:

22 10. a. Each licensee, shall make, keep and preserve the following
23 books, accounts and other records for a period of ~~three~~ five years:

24 (1) a record of each ~~payment instrument~~ transmission sold,
25 including the date¹ and the amount¹ of the transaction¹ [, the name
26 of the payee, the federal tax payer identification number of the payee,
27 the face amount of the payment instrument, the date of the payment
28 instrument, the name or names of those presenting the payment
29 instrument for payment, the name of the financial institution on which
30 the payment instrument is drawn and the financial institution's transit
31 routing number, the amount of the fee charged, and a photograph,
32 photostat, duplicate or any other reproduction of the front and back
33 of the fully endorsed payment instrument]¹;

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

37 (3) settlement sheets received from authorized delegates;

38 (4) bank statements and bank reconciliation records;

39 (5) records of outstanding payment instruments;

40 (6) records of each payment instrument paid within the three-year
41 period;

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

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

46 (9) a list of the names and addresses of all clearing banks through

1 which the licensee's money transmission business is conducted; and
2 (10) such other books and records as the commissioner may
3 require by regulation.

4 b. Maintenance of the documents required by this section in a
5 photographic, electronic or other similar form shall constitute
6 compliance with this section.

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

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

24 e. Each licensee is deemed to consent to inspection, by the
25 commissioner and any appropriate representative of any State or
26 federal law enforcement agency, of all records of the licensee
27 regarding business regulated under P.L.1998, c.14 (C.17:15C-1 et
28 seq.).

29 ¹[f. Each licensee shall file with the Attorney General of New
30 Jersey a duplicate copy of any report the licensee is required to file
31 regarding business conducted in this State pursuant to 31 U.S.C. §
32 5311 et seq. and 31 C.F.R. s.103.11 et seq.]¹

33 (cf: P.L.1998, c.14, s.10)

34

35 6. Section 12 of P.L.1998, c.14 (C.17:15C-12) is amended to read
36 as follows:

37 12. a. Each licensee shall file with the commissioner [on or before
38 April 1 of each year an annual report] a report for the quarterly
39 periods ending March 31, June 30, September 30 and December 31 of
40 each year, containing the information required by the commissioner
41 and within the time period required by the commissioner by regulation,
42 along with a fee in an amount set by the commissioner by regulation
43 not to exceed \$200 per filing . ¹In addition to this filing fee, the
44 commissioner may assess an additional fee by regulation in that
45 amount which the commissioner determines is necessary to meet the
46 costs to the department pursuant to this section.¹

1 b. The commissioner may require reports of any licensee or
2 authorized delegate, under penalty of perjury or otherwise, concerning
3 the licensee's or authorized delegate's business conducted pursuant to
4 the license issued under this act, as the commissioner requires for the
5 enforcement of this act.

6 c. A licensee who fails to file any report required by this section on
7 or before the day designated for making the report, or fails to include
8 any prescribed matter in the report, shall pay a penalty of ¹[\$100]
9 \$200¹ for each day that the report is delayed or incomplete, unless the
10 commissioner, for good cause shown, reduces the amount to be paid,
11 or unless the time to file the report is extended in writing by the
12 commissioner. The penalty may be recovered in a summary
13 proceeding under ["the penalty enforcement law," N.J.S.2A:58-1 et
14 seq.] the "Penalty Enforcement Law of 1999," P.L.1999, c.274
15 (C.2A:58-10 et seq.)

16 d. ~~Each licensee shall file with the commissioner on or~~
17 before April 1 of each year an annual report and shall include in its
18 annual report:

19 (1) (a) except as provided pursuant to subparagraph (b) of this
20 paragraph (1), for a person licensed to engage only in the business of
21 a foreign money transmitter, a copy of its most recent audited
22 consolidated annual financial statement, including balance sheet,
23 statement of income or loss, statement of changes in shareholder's
24 equity and statement of changes in financial position, or, in the case of
25 a licensee that is a wholly owned subsidiary of another corporation,
26 the consolidated audited annual financial statement of the parent
27 corporation may be filed in lieu of the licensee's audited annual
28 financial statement;

29 (b) for a person licensed to engage only in the business of a foreign
30 money transmitter, a copy of its most recent compiled annual financial
31 statement, including balance sheet, statement of income or loss,
32 statement of changes in shareholder's equity and statement of changes
33 in financial position, except that the commissioner may, for good
34 cause, request a foreign money transmitter to submit an audited
35 financial statement;

36 (2) for the most recent quarter for which data is available prior to
37 the date of the filing of the annual report, but in no event more than
38 120 days prior to the annual report filing date, the licensee shall
39 provide the number of payment instruments sold by the licensee in the
40 State, the dollar amount of those instruments and the dollar amount of
41 those instruments currently outstanding;

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

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

1 (5) a list of the locations within this State at which business
2 regulated by this act is being conducted by either the licensee or its
3 authorized delegate; [and]

4 (6) a copy of the licensee's most recent registration with the
5 Financial Crimes Enforcement Network (FinCEN) as a money
6 transmitter business pursuant to 31 C.F.R. s.103.11 et seq.; and

7 ~~[(6)]~~ (7) such other information as the commissioner may require
8 by regulation.

9 (cf: P.L.1998, c.14, s.12)

10
11 7. Section 16 of P.L.1998, c.14 (C.17:15C-16) is amended to read
12 as follows:

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

17 a. The licensee ¹~~[or the licensee's authorized delegate]~~¹ has made
18 a material misstatement or suppressed or withheld information on the
19 application for a license or any document required to be filed with the
20 commissioner ¹, or the licensee's authorized delegate has made a
21 material misstatement or suppressed or withheld information on the
22 application for a license or any document required to be filed with the
23 commissioner, and the licensee knew or should have known of the
24 delegate's misstatement, suppression or withholding of the
25 information ¹ ;

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

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

32 d. The licensee knowingly violates any material provision of this
33 act or any rule or order validly promulgated by the commissioner
34 under authority of this act;

35 e. The licensee is conducting its business in an unsafe or unsound
36 manner;

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

45 g. The licensee has suspended payment of its obligations, has made
46 an assignment for the benefit of its creditors, or has admitted in

1 writing its inability to pay its debts as they become due;

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

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

6 j. The licensee willfully fails to make any report required by this
7 act;

8 k. The licensee has willfully violated any provision of 31 C.F.R.
9 s.103.11 et seq.; [or]

10 l. The licensee has willfully violated any provision of P.L.1994,
11 c.121 (C.2C:21-23 et seq.) ; ¹or¹

12 m. The licensee has been convicted of, or has entered a plea of
13 guilty or nolo contendere to a crime of the first, second, third or fourth
14 degree, without regard to whether adjudication was held ¹; or

15 n. The licensee's authorized delegate, and the managers and
16 employees actively engaged in the money transmitting business of the
17 delegate, while engaged in the activities of a money transmitter on
18 behalf of that licensee, violates any provision of P.L.1998, c.14
19 (C.17:15C-1 et seq.) or any order, rule or regulation issued pursuant
20 to that act or violates any other State or federal law related to the
21 activities of a money transmitter]¹.

22 (cf: P.L.1998, c.14, s.16)

23

24 8. Section 17 of P.L.1998, c.14 (C.17:15C-17) is amended to read
25 as follows:

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

31 b. The department shall collect and maintain the names and
32 addresses of each licensee and each authorized delegate of each
33 licensee. The department shall make that information available to the
34 public on the official website of the department and shall update that
35 information as it is received by the department. ¹[A delegate shall not
36 engage in the activities of an authorized delegate on behalf of a
37 licensee until the delegate's name and address are available on the
38 official website of the department.] The commissioner may assess a
39 fee by regulation in that amount which the commissioner determines
40 is necessary to meet the costs to the department pursuant to this
41 section.¹

42 (cf: P.L.1998, c.14, s.17)

43

44 9. Section 18 of P.L.1998, c.14 (C.17:15C-18) is amended to read
45 as follows:

46 18. a. An authorized delegate shall not make any fraudulent or

1 false statement or misrepresentation to a licensee or to the
2 commissioner.

3 b. All money transmission or sale or issuance of payment
4 instrument activities conducted by authorized delegates shall be strictly
5 in accordance with the licensee's written procedures to the authorized
6 delegate.

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

15 d. An authorized delegate is deemed to consent to [the
16 commissioner's] inspection by the commissioner and any appropriate
17 representative of any State or federal law enforcement agency, with or
18 without prior notice to the licensee or authorized delegate, of the
19 books and records of the authorized delegate of the licensee whenever
20 the commissioner has a reasonable basis to believe that the licensee or
21 authorized delegate is not in compliance with this act.

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

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

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

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

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

44 j. An authorized delegate shall prominently display at each of its
45 locations a notice in a form prescribed by the commissioner, indicating
46 that the authorized delegate is an authorized delegate of a licensee

1 under P.L.1998, c.14 (C.17:15C-1 et seq.).

2 ¹[k. An authorized delegate, or a licensee acting on behalf of the
3 authorized delegate, shall file a surety bond, in an amount prescribed
4 by the commissioner by regulation of not less than \$100,000 and not
5 more than \$1,000,000. The security shall be in a form satisfactory to
6 the commissioner and shall run to the State for the benefit of any
7 person injured by a wrongful act, default, fraud or misrepresentation
8 of the delegate, including its directors, officers and employees, to
9 secure the faithful performance of the obligations of the delegate with
10 respect to the receipt, handling, transmission and payment of money
11 in connection with the sale and issuance of payment instruments,
12 transmission of money, or both. In the case of a bond, the bond shall
13 be obtained from a surety company authorized to do business in this
14 State and the aggregate liability of the surety in no event shall exceed
15 the principal sum of the bond.

16 l. Except as to delegates that are publicly traded corporations, each
17 director, key shareholder, officer, owner, partner, manager and
18 employee of an authorized delegate shall submit to the commissioner
19 the delegate's name, address, fingerprints, and written consent for a
20 criminal history record background check to be performed. The
21 commissioner is authorized to exchange fingerprint data with and
22 receive criminal history record information from the State Bureau of
23 Identification in the Division of State Police and the Federal Bureau
24 of Investigation consistent with applicable State and federal laws, rules
25 and regulations, for the purposes of facilitating determinations
26 concerning delegate eligibility. The delegate shall bear the cost for the
27 criminal history record background check, including all costs of
28 administering and processing the check. The Division of State Police
29 shall promptly notify the commissioner in the event the delegate or any
30 person who was the subject of a criminal history record background
31 check pursuant to this subsection is arrested for a crime or offense in
32 this State after the date the background check was performed.

33 m. An authorized delegate shall not employ an unauthorized alien,
34 as defined in the federal "Immigration Reform and Control Act of
35 1986," 8U.S.C. s.1324a. et seq.]¹

36 (cf: P.L.1998, c.14, s.18)

37

38 10. Section 24 of P.L.1998, c.14 (C.17:15C-24) is amended to
39 read as follows:

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

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

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

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

7 (cf: P.L.1998, c.14, s.24)

8

9 ¹[11. (New section) a. A licensee who initiates an international
10 money transfer on behalf of a consumer shall provide the following
11 disclosures in the manner required under this section:

12 (1) The exchange rate used by the licensee in connection with the
13 transaction; and

14 (2) (a) The exchange rate prevailing at a major financial center of
15 the foreign country whose currency is involved in the transaction, as
16 of the close of business on the business day immediately preceding the
17 date of the transaction; or (b) the official exchange rate, if any, of the
18 government or central bank of that foreign country;

19 (3) All commissions and fees charged by the licensee in connection
20 with such transaction; and

21 (4) The exact amount of foreign currency to be received by the
22 recipient in the foreign country, which shall be disclosed to the
23 consumer before the transaction is consummated and printed on the
24 receipt referred to in subsection c. of this section.

25 b. The information required to be disclosed under paragraphs (1),
26 (2) and (3) of subsection a. shall be prominently displayed on the
27 premises of the licensee both at the interior location to which the
28 public is admitted for purposes of initiating an international money
29 transfer and on the exterior of the premises.

30 c. The information required to be disclosed under paragraphs (1),
31 (2), (3) and (4) of subsection a. shall be prominently displayed on all
32 forms and receipts used by the licensee when initiating an international
33 money transfer in the premises.

34 d. The disclosures required under this section shall be in English
35 and in the same language as that principally used by the licensee, or
36 any of its delegates, to advertise, solicit, or negotiate, either orally or
37 in writing, at that office, if other than English.]¹

38

39 ¹[12. (New section) A licensee or authorized delegate shall not
40 perform a transaction involving money in an amount of more than
41 \$10,000 as a single transaction. Nothing in this section shall be
42 construed to prohibit a licensee or authorized delegate from
43 performing multiple transactions each involving money in an amount
44 of \$10,000 or less for the same person, provided that the licensee files
45 all reports required to be filed pursuant to 31 U.S.C. § 5311 et seq.
46 and 31 C.F.R. s.103.11 et seq.]¹

1 ¹[13. (New section) A licensee or authorized delegate shall not
2 perform any transaction involving a payment instrument in an amount
3 of \$500 or more, unless the person requesting the transaction presents
4 to either the licensee or authorized delegate, satisfactory evidence of
5 the person's identity. Satisfactory evidence of a person's identity
6 consists of any one of the following forms of identification:

- 7 a. a current driver's license;
8 b. a current passport; or
9 c. a valid document issued by a federal or state agency, and bearing
10 the person's signature, a photographic image of the person's face, and
11 a physical description of the person.]¹

12
13 ¹[14.] 11.¹ This act shall take effect on the 180th day following
14 enactment.