

SENATE, No. 2201

STATE OF NEW JERSEY

INTRODUCED JUNE 16, 1997

By Senator INVERSO

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

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

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

10  
11 2. As used in this act:

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

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

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

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

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

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

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

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

**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.**

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

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

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

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

13 "Money transmitter" means a person who engages in this State in  
14 the business of:

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

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

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

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

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

38 "Permissible investments" means:

39 (1) cash;

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

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

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

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

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

16 (7) demand borrowing agreements made to a corporation or a  
17 subsidiary of a corporation whose capital stock is listed on a national  
18 exchange;

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

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

24  
25 3. a. This act shall not apply to:

26 (1) The United States or any department, agency, or  
27 instrumentality thereof;

28 (2) The United States Postal Service;

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

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

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

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

45 b. Authorized delegates of a licensee, acting within the scope of  
46 authority conferred by a written contract as described in section 17 of

1 this act shall not be required to obtain a license pursuant to this act.

2

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

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

10

11 5. a. Each licensee shall at all times have a net worth of not less  
12 than \$100,000, calculated in accordance with generally accepted  
13 accounting principles. Licensees engaging in money transmission at  
14 more than one location or through authorized delegates shall have an  
15 additional net worth of \$25,000 per location or agent located in this  
16 State, as applicable, up to a maximum net worth amount of  
17 \$1,000,000.

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

23

24 6. a. Each licensee shall at all times possess permissible  
25 investments having an aggregate market value, calculated in  
26 accordance with generally accepted accounting principles, of not less  
27 than the aggregate face amount of all outstanding payment instruments  
28 issued or sold by the licensee in the United States. This requirement  
29 may be waived by the commissioner if the dollar volume of a licensee's  
30 outstanding payment instruments does not exceed the bond or other  
31 security devices posted by the licensee pursuant to section 8 of this  
32 act.

33 b. In the event of bankruptcy of the licensee, permissible  
34 investments, even if commingled with other assets of the licensee, shall  
35 be deemed to be held in trust for the benefit of the purchasers and  
36 holders of the licensee's outstanding payment instruments by operation  
37 of law.

38

39 7. Each application for a license shall be made in writing, under  
40 oath, and in a form prescribed by the commissioner. Each application  
41 shall contain:

42 a. For all applicants:

43 (1) The exact name of the applicant, the applicant's principal  
44 address, any fictitious or trade name used by the applicant in the  
45 conduct of its business and the location of the applicant's business  
46 records;

- 1           (2) The history, if any, of the applicant's material litigation  
2 and criminal convictions for the five year period prior to the date of  
3 the application;
- 4           (3) A description of the activities conducted by the applicant  
5 and a history of operations;
- 6           (4) A description of the business activities in which the  
7 applicant seeks to be engaged in the State;
- 8           (5) A list identifying the applicant's proposed authorized  
9 delegates in the State, if any, at the time of the filing of the license  
10 application;
- 11          (6) A sample authorized delegate contract, if applicable;
- 12          (7) A sample form of payment instrument, if applicable;
- 13          (8) Each location at which the applicant and its authorized  
14 delegates, if any, propose to conduct the licensed activities in the  
15 State;
- 16          (9) The name and address of each clearing bank on which the  
17 applicant's payment instruments will be drawn or through which those  
18 payment instruments will be payable;
- 19          (10) A list identifying each country to which an applicant  
20 proposes to transmit money or from which an applicant proposes to  
21 receive money transmissions;
- 22          (11) Federal tax identification number; and
- 23          (12) Non-refundable application fee as prescribed by  
24 regulation by the commissioner in an amount not to exceed \$1,000.
- 25        b. If the applicant is a corporation, the applicant shall also provide:
  - 26           (1) The date of the applicant's incorporation and state of  
27 incorporation;
  - 28           (2) A certificate of good standing from the state in which the  
29 applicant was incorporated;
  - 30           (3) A description of the corporate structure of the applicant,  
31 including the identity of any parent or subsidiary of the applicant, and  
32 the disclosure of whether any parent or subsidiary is publicly traded on  
33 any stock exchange;
  - 34           (4) The name, business and residence address, social security  
35 number, date of birth and employment history for the past five years  
36 of each of the applicant's executive officers and of each officer or  
37 manager who will be in charge of the applicant's activities to be  
38 licensed under this act;
  - 39           (5) The name, business and residence address, social security  
40 number, date of birth and employment history for the period five years  
41 prior to the date of the application of each key shareholder of the  
42 applicant;
  - 43           (6) The history, if any, of material litigation and criminal  
44 convictions for the five year period prior to the date of the application  
45 of every executive officer or key shareholder of the applicant;
  - 46           (7) A copy of the applicant's most recent audited financial

1 statements (including balance sheet, statement of income or loss,  
2 statement of changes in shareholder equity and statement of changes  
3 in financial position) prepared by a certified public accountant or  
4 public accountant in good standing and, if available, the applicant's  
5 audited financial statements for the immediately preceding three year  
6 period. However, if the applicant is a wholly owned subsidiary of  
7 another corporation, the applicant may submit either the parent  
8 corporation's consolidated audited financial statements for the current  
9 year and for the immediately preceding three year period or the parent  
10 corporation's Form 10-K reports filed with the Securities and  
11 Exchange Commission for the prior three years in lieu of the  
12 applicant's financial statements. If the applicant is a wholly owned  
13 subsidiary of a corporation having its principal place of business  
14 outside the United States, similar documentation filed with the parent  
15 corporation's non-United States regulator may be submitted to satisfy  
16 this provision;

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

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

26 c. If the applicant is not a corporation, the applicant shall also  
27 provide:

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

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

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

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

1 (5) Alien registration information, if applicable.

2 d. Such other information as the commissioner may require by  
3 regulation.

4

5 8. a. Each application must be accompanied by a surety bond,  
6 irrevocable letter of credit or such other similar security device  
7 (hereinafter "security device") acceptable to the commissioner in an  
8 amount prescribed by the commissioner by regulation of not less than  
9 \$100,000 and not more than \$1,000,000. The security device shall be  
10 in a form satisfactory to the commissioner and shall run to the State  
11 for the benefit of any person injured by a wrongful act, default, fraud  
12 or misrepresentation of the licensee, including its directors, officers,  
13 authorized delegates and employees, to secure the faithful performance  
14 of the obligations of the licensee with respect to the receipt, handling,  
15 transmission, and payment of money in connection with the sale and  
16 issuance of payment instruments, transmission of money, or both. In  
17 the case of a bond, the bond shall be obtained from a surety company  
18 authorized to do business in this State and the aggregate liability of the  
19 surety in no event shall exceed the principal sum of the bond.

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

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

42 d. The security device shall remain in place for no longer than five  
43 years after the licensee ceases money transmission operations in the  
44 State. However, notwithstanding this provision, the commissioner  
45 may permit the security device to be reduced or eliminated prior to  
46 that time to the extent that the amount of the licensee's payment

1 instruments outstanding in this State are reduced. The commissioner  
2 may also permit a licensee to substitute a letter of credit or other form  
3 of security device acceptable to the commissioner for the security  
4 device in place at the time the licensee ceases money transmission  
5 operations in the State by surrender, revocation or expiration of its  
6 license.

7

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

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

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

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

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

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

1 g. If the licensed name or licensed business address is changed,  
2 the licensee shall notify the commissioner in writing of the change  
3 within 10 days.

4  
5 10. a. Each licensee, shall make, keep and preserve the following  
6 books, accounts and other records for a period of three years:

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

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

11 (3) settlement sheets received from authorized delegates;

12 (4) bank statements and bank reconciliation records;

13 (5) records of outstanding payment instruments;

14 (6) records of each payment instrument paid within the three  
15 year period;

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

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

20 (9) a list of the names and addresses of all clearing banks  
21 through which the licensee's money transmission business is  
22 conducted;

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

25 b. Maintenance of the documents required by this section in a  
26 photographic, electronic or other similar form shall constitute  
27 compliance with this section.

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

30 d. The records of the licensee regarding business regulated under  
31 this act shall be maintained at its principal place of business or, with  
32 notice to the commissioner, at another location designated by the  
33 licensee. If the records are maintained outside this State, the  
34 commissioner may require that the licensee reimburse the department  
35 for the travel costs incurred in the examination or investigation of  
36 those records or may require that the licensee make those records  
37 available to the commissioner at the commissioner's office not more  
38 than seven business days after demand. The commissioner may further  
39 require that those records be accompanied by an individual who will  
40 be available to answer questions regarding those records and the  
41 business regulated under this act. The commissioner may require the  
42 appearance of a specific individual, or request that the licensee  
43 designate an individual with knowledge of the records and the  
44 business.

45  
46 11. a. The commissioner may investigate and examine any licensee

1 or other person the commissioner deems necessary to determine  
2 compliance with this act and the orders, rules and regulations issued  
3 hereunder. For these purposes, the commissioner may examine the  
4 books, accounts, records, and other documents or matters of any  
5 licensee or other person. The commissioner shall have the power to  
6 compel by subpoena the production of all relevant books, records and  
7 other documents and materials relative to an examination or  
8 investigation. The cost of the investigations and examinations shall be  
9 borne by the licensee.

10 b. Examinations and investigations conducted under the  
11 provisions of this section shall be confidential except as required in the  
12 administration, enforcement and prosecution of violations under this  
13 act, or pursuant to a court order made upon notice to the  
14 commissioner and after affording the commissioner an opportunity to  
15 advise the court of reasons for excluding that evidence. The court shall  
16 order the issuance of a subpoena for the production or admission into  
17 evidence of any report or portion thereof, only if it is satisfied that: (1)  
18 it is material and relevant to the issues in the proceedings; and (2) the  
19 ends of justice and public advantage will be served thereby. If any  
20 person refuses to obey a subpoena, or to give testimony or produce  
21 evidence as required thereby, the commissioner may apply ex parte to  
22 any court having jurisdiction over that person for an order compelling  
23 the appearance of the witness before the commissioner to give  
24 testimony or to produce evidence as required thereby, or both. The  
25 commissioner, in lieu of an on-site examination, may establish by  
26 regulation other reports which will be deemed acceptable and which  
27 will be considered for all purposes an official report of the  
28 commissioner.

29 c. The commissioner may request additional financial data from  
30 a licensee or conduct an on-site examination or investigation of any  
31 authorized delegate or location of a licensee within this State without  
32 prior notice to the authorized delegate or licensee if the commissioner  
33 has a reasonable basis to believe that the licensee or authorized  
34 delegate is not in compliance with this act. Whenever the  
35 commissioner examines or investigates an authorized delegate's  
36 operations, the authorized delegate shall pay the costs of that  
37 examination or investigation, but the licensee shall remain liable for  
38 ensuring that the payment is made. Whenever the commissioner  
39 examines or investigates a licensee's location within the State, the  
40 licensee shall pay all reasonably incurred costs of that examination.

41  
42 12. a. Each licensee shall file with the commissioner on or before  
43 April 1 of each year an annual report containing the information  
44 required by the commissioner by regulation, along with a fee in an  
45 amount set by the commissioner by regulation not to exceed \$200.

46 b. The commissioner may require reports of any licensee or

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

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

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

15 (1) a copy of its most recent audited consolidated annual  
16 financial statement, including balance sheet, statement of income or  
17 loss, statement of changes in shareholder's equity and statement of  
18 changes in financial position, or, in the case of a licensee that is a  
19 wholly owned subsidiary of another corporation, the consolidated  
20 audited annual financial statement of the parent corporation may be  
21 filed in lieu of the licensee's audited annual financial statement;

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

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

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

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

36 (6) such other information as the commissioner may require  
37 by regulation.

38

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (4) Purchases of a controlling amount of shares on a national  
46 stock exchange of a publicly held licensee, until the licensee has actual

1 notice of that purchase and, within five days, notifies the  
2 commissioner; and

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

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

13

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

32 b. The commissioner may:

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

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

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

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

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

46 d. Nothing in this section shall be construed to prevent the

1 disclosure of information that is admissible in evidence in any civil or  
2 criminal proceeding brought by or at the request of the commissioner  
3 or this State to enforce or prosecute violations of this act or the rules,  
4 regulations or orders issued or promulgated pursuant to this act.

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

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

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

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

20 d. The licensee knowingly violates any material provision of this  
21 act or any rule or order validly promulgated by the commissioner  
22 under authority of this act;

23 e. The licensee is conducting its business in an unsafe or unsound  
24 manner;

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

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

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

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

40 j. The licensee willfully fails to make any report required by this  
41 act.

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

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

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

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

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

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

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

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

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

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

46      h. Authorized delegates shall comply with the provisions of 31

1 C.F.R.§103.11 et seq. and P.L.1994, c.121 (C.2C:21-23 et seq.).

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

4

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

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

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

13 (3) has made or caused to be made in any application or report  
14 filed with the commissioner or in any proceeding before the  
15 commissioner, any statement which was at the time and in the  
16 circumstances under which it was made, false or misleading with  
17 respect to any material fact, or has omitted to state in any such  
18 application or report any material fact which is required to be stated  
19 therein,

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

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

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

39

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

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

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

18 b. The commissioner, in the exercise of the commissioner's  
19 reasonable judgment, is authorized to compromise, settle, and collect  
20 civil penalties with any person for violations of any provision of this  
21 act, or of any rule, regulation or order issued or promulgated pursuant  
22 to this act.

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

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

41 c. Notwithstanding the issuance of a consent order, the  
42 commissioner may seek civil or criminal penalties or compromise civil  
43 penalties concerning matters encompassed by the consent order, unless  
44 the consent order by its terms expressly precludes the commissioner  
45 from so doing.

46 d. The commissioner is authorized to exchange fingerprint data with

1 and receive criminal history information from the Federal Bureau of  
2 Investigation and the New Jersey Division of State Police or any other  
3 appropriate agency for use in performing background checks. The  
4 commissioner is authorized to conduct additional background checks  
5 the commissioner deems appropriate.

6  
7 24. a. Any person who knowingly and willfully violates any  
8 provision of this act for which a penalty is not specifically provided is  
9 guilty of a crime of the fourth degree.

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

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

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

20  
21 25. The commissioner shall promulgate regulations pursuant to the  
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
23 necessary to effectuate the provisions of this act.

24  
25 26. a. Any licensee, authorized delegate or other person who  
26 engages in business activities that are regulated under this act, with  
27 or without filing an application, is deemed to have done both of the  
28 following:

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

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

34 b. Within three business days after service of process upon the  
35 commissioner, the commissioner shall transmit by certified mail copies  
36 of all lawful process accepted by the commissioner as an agent to that  
37 person at its last known address. Service of process shall be  
38 considered complete three business days after the commissioner  
39 deposits copies of the documents in the United States mail.

40  
41 27. Every person engaged in activities within this State  
42 encompassed by this act on the effective date of this act, except those  
43 persons already licensed under chapter 15 of Title 17 of the Revised  
44 Statutes or P.L.1964, c.273 (C.17:15B-1 et seq.), shall file an  
45 application in accordance with the provisions of this act within 90 days  
46 after the date this act becomes operative. A person licensed under

1 chapter 15 of Title 17 of the Revised Statutes or P.L.1964, c.273  
2 (C.17:15B-1 et seq.), shall continue as a licensee under this act until  
3 April 1, 1998, at which time, if the licensee intends to continue to  
4 engage in activities regulated by this act, the licensee shall renew the  
5 license as a licensee under the provisions of this act no later than April  
6 1, 1998.

7

8 28. The following are repealed:

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

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

11

12 29. Section 25 of this act shall take effect immediately and the  
13 remainder of this act shall take effect on January 1, 1998.

14

15

16

#### STATEMENT

17

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

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

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

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

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

35 The bill restricts the business of money transmission to those  
36 licensed under the bill but provides an exception for federal and state  
37 departments and agencies (including the provision of electronic  
38 transfer of government benefits), bank holding companies, state or  
39 federally chartered banks, savings banks, savings and loan associations  
40 or credit unions or a person licensed as a debt adjuster. Each licensee  
41 is required to have a net worth of \$100,000 plus an additional net  
42 worth amount of \$25,000 for each location or authorized delegate  
43 through whom its business is conducted in this State up to a maximum  
44 net worth amount of \$1,000,000 regardless of the total number of  
45 locations and authorized delegates.

46 The bill requires each application for a license to be accompanied

1 by a surety bond or similar security device acceptable to the  
2 commissioner in an amount set by the commissioner of not less than  
3 \$100,000 or more than \$1,000,000.

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

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

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

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

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

23

24

25

26

27 Provides for the licensing and regulation of money transmitters.