

AN ACT

relating to the regulation of money services businesses; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 151 to read as follows:

CHAPTER 151. REGULATION OF MONEY SERVICES BUSINESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. SHORT TITLE. This chapter may be cited as the Money Services Act.

Sec. 151.002. DEFINITIONS. (a) This section defines general terms that apply to an applicant for or holder of a money services license issued under this chapter, regardless of whether the license is a money transmission license or a currency exchange license. Additional terms that apply specifically to money transmission are defined in Section 151.301. Additional terms that apply specifically to currency exchange are defined in Section 151.501.

(b) In this chapter:

(1) "Applicant" means a person that files an application for a license under this chapter.

(2) "Authorized delegate" means a person a license holder appoints under Section 151.402 to conduct money transmission on behalf of the license holder.

1           (3) "Bank Secrecy Act" means the Bank Secrecy Act (31  
2 U.S.C. Section 5311 et seq.), and its implementing regulations set  
3 forth at 31 C.F.R. Part 103.

4           (4) "Commission" means the Finance Commission of  
5 Texas.

6           (5) "Commissioner" means the Banking Commissioner of  
7 Texas or a person designated by the banking commissioner and acting  
8 under the banking commissioner's direction and authority.

9           (6) "Control" means ownership of, or the power to  
10 directly or indirectly vote, 25 percent or more of the outstanding  
11 voting interests of a license holder or applicant, and includes an  
12 individual whose ownership is through one or more legal entities.

13           (7) "Currency exchange" has the meaning assigned by  
14 Section 151.501.

15           (8) "Currency exchange license" means a license issued  
16 under Subchapter F.

17           (9) "Department" means the Texas Department of  
18 Banking.

19           (10) "Executive officer" means a president, a  
20 presiding officer of the executive committee, a treasurer or chief  
21 financial officer, or any other individual who performs similar  
22 functions.

23           (11) "License holder" means a person that holds a  
24 money transmission license or a currency exchange license.

25           (12) "Location" means a place at which activity  
26 regulated by this chapter occurs.

27           (13) "Material litigation" means any litigation that,

1 according to generally accepted accounting principles, is  
2 considered significant to an applicant's or license holder's  
3 financial health and would be required to be referenced in that  
4 entity's audited financial statements, report to shareholders, or  
5 similar documents.

6 (14) "Money services" means money transmission or  
7 currency exchange.

8 (15) "Money transmission" has the meaning assigned by  
9 Section 151.301.

10 (16) "Money transmission license" means a license  
11 issued under Subchapter D.

12 (17) "Person" means an individual or legal entity.

13 (18) "Principal" means:

14 (A) with respect to a sole proprietorship, an  
15 owner; or

16 (B) with respect to a legal entity other than a  
17 sole proprietorship, an executive officer, director, general  
18 partner, trustee, or manager, as applicable.

19 (19) "Record" means information that is:

20 (A) inscribed on a tangible medium; or

21 (B) stored in an electronic or other medium and  
22 retrievable in perceivable form.

23 (20) "Responsible individual" means an individual who  
24 has direct control over or significant management policy and  
25 decision-making authority with respect to a license holder's  
26 ongoing, daily money services operations in this state.

27 (21) "USA PATRIOT ACT" means the Uniting and

1 Strengthening America by Providing Appropriate Tools Required to  
2 Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001  
3 (Pub. L. No. 107-56, 115 Stat. 272).

4 Sec. 151.003. EXCLUSIONS. The following persons are not  
5 required to be licensed under this chapter:

6 (1) the United States or an instrumentality of the  
7 United States, including the United States Post Office or a  
8 contractor acting on behalf of the United States Post Office;

9 (2) a state or an agency, political subdivision, or  
10 other instrumentality of a state;

11 (3) a federally insured financial institution, as that  
12 term is defined by Section 201.101, that is organized under the laws  
13 of this state, another state, or the United States;

14 (4) a foreign bank branch or agency in the United  
15 States established under the federal International Banking Act of  
16 1978 (12 U.S.C. Section 3101 et seq.);

17 (5) a person acting as an agent for an entity excluded  
18 under Subdivision (3) or (4), to the extent of the person's actions  
19 in that capacity, provided that:

20 (A) the entity is liable for satisfying the money  
21 services obligation owed to the purchaser on the person's receipt  
22 of the purchaser's money; and

23 (B) the entity and person enter into a written  
24 contract that appoints the person as the entity's agent and the  
25 person acts only within the scope of authority conferred by the  
26 contract;

27 (6) a person that, on behalf of the United States or a

department, agency, or instrumentality of the United States, or a state or county, city, or any other governmental agency or political subdivision of a state, provides electronic funds transfer services of governmental benefits for a federal, state, county, or local governmental agency;

(7) a person that acts as an intermediary on behalf of and at the direction of a license holder in the process by which the license holder, after receiving money or monetary value from a purchaser, either directly or through an authorized delegate, transmits the money or monetary value to the purchaser's designated recipient, provided that the license holder is liable for satisfying the obligation owed to the purchaser;

(8) an attorney or title company that in connection with a real property transaction receives and disburses domestic currency or issues an escrow or trust fund check only on behalf of a party to the transaction;

(9) a person engaged in the business of currency transportation who is both a registered motor carrier under Chapter 643, Transportation Code, and a licensed armored car company or courier company under Chapter 1702, Occupations Code, provided that the person does not engage in the money transmission or currency exchange business without a license issued under this chapter; and

(10) any other person, transaction, or class of persons or transactions exempted by commission rule or any other person or transaction exempted by the commissioner's order on a finding that the licensing of the person is not necessary to achieve the purposes of this chapter.

[Sections 151.004-151.100 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 151.101. ADMINISTRATION. The department shall administer this chapter.

Sec. 151.102. RULES. (a) The commission may adopt rules to administer and enforce this chapter, including rules necessary or appropriate to:

(1) implement and clarify this chapter;

(2) preserve and protect the safety and soundness of money services businesses;

(3) protect the interests of purchasers of money services and the public;

(4) protect against drug trafficking, terrorist funding, and money laundering, structuring, or a related financial crime; and

(5) recover the cost of maintaining and operating the department and the cost of administering and enforcing this chapter and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of this chapter.

(b) The presence or absence of a specific reference in this chapter to a rule regarding a particular subject is not intended to and does not limit the general rulemaking authority granted to the commission by this section.

Sec. 151.103. COMMISSIONER'S GENERAL AUTHORITY. (a) Each power granted to the commissioner under this chapter is in addition

to, and not in limitation of, each other power granted under this chapter. The fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other provision of this chapter.

(b) Each power granted to the commissioner under this chapter is in addition to, and not in limitation of, powers granted to the commissioner under other law. The fact that the commissioner possesses, or has exercised, a power under any other provision of law does not preclude the commissioner from exercising any power under this chapter. The fact that the commissioner possesses, or has exercised, a power under a provision of this chapter does not preclude the commissioner from exercising a power under any other law.

(c) The commissioner may impose on any authority, approval, exemption, license, or order issued or granted under this chapter any condition the commissioner considers reasonably necessary or appropriate to carry out and achieve the purposes of this chapter.

Sec. 151.104. INVESTIGATIONS. (a) The commissioner may conduct investigations in or outside this state and the United States as the commissioner considers necessary or appropriate to administer and enforce this chapter, including investigations to:

(1) determine whether to approve an application for or renewal of a license or a request for approval or exemption filed under this chapter or a rule adopted or order issued under this chapter;

(2) determine whether a person has violated or is

1 likely to violate this chapter or a rule adopted or order issued  
2 under this chapter;

3 (3) determine whether a license or authorized delegate  
4 designation should be revoked or suspended;

5 (4) otherwise aid in the enforcement of this chapter  
6 or a rule adopted or order issued under this chapter; and

7 (5) aid in the adoption of rules or issuance of orders  
8 under this chapter.

9 (b) For purposes of an investigation, examination, or other  
10 proceeding under this chapter, the commissioner may administer or  
11 cause to be administered oaths, subpoena witnesses, compel the  
12 attendance of witnesses, take evidence, and require the production  
13 of any document that the commissioner determines to be relevant to  
14 the inquiry.

15 (c) If a person refuses to obey a subpoena, a district court  
16 of Travis County, on application by the commissioner, may issue an  
17 order requiring the person to appear before the commissioner and  
18 produce documents or give evidence regarding the matter under  
19 investigation.

20 (d) The commissioner may employ a person or request the  
21 attorney general, the Department of Public Safety, or any other  
22 state, federal, or local law enforcement agency to assist in  
23 enforcing this chapter.

24 (e) The commissioner may recover the reasonable costs  
25 incurred in connection with an investigation conducted under this  
26 chapter from the person that is the subject of the investigation.

27 Sec. 151.105. REGULATORY COOPERATION. (a) To efficiently



1 and effectively administer and enforce this chapter and to minimize  
2 regulatory burden, the commissioner may cooperate, coordinate, and  
3 share information with another state, federal, or foreign  
4 governmental agency that:

5 (1) regulates or supervises persons engaged in money  
6 services businesses or activities subject to this chapter; or

7 (2) is authorized to investigate or prosecute  
8 violations of a state, federal, or foreign law related to persons  
9 engaged in money services businesses or activities subject to this  
10 chapter, including a state attorney general's office.

11 (b) The commissioner, with respect to an agency described by  
12 and for the purposes set forth in Subsection (a), may:

13 (1) enter into a written cooperation, coordination, or  
14 information-sharing contract or agreement with the agency;

15 (2) share information with the agency, subject to the  
16 confidentiality provisions of Section 151.606(b)(3);

17 (3) conduct a joint or concurrent on-site examination  
18 or other investigation or enforcement action with the agency;

19 (4) accept a report of examination or investigation  
20 by, or a report submitted to, the agency, in which event the  
21 accepted report is an official report of the commissioner for all  
22 purposes;

23 (5) engage the services of the agency to assist the  
24 commissioner in performing or discharging a duty or responsibility  
25 imposed by this chapter or other law and pay a reasonable fee for  
26 the services;

27 (6) share with the agency any supervisory or

1 examination fees assessed against a license holder or authorized  
2 delegate under this chapter and receive a portion of supervisory or  
3 examination fees assessed by the agency against a license holder or  
4 authorized delegate; and

5 (7) take other action as the commissioner considers  
6 reasonably necessary or appropriate to carry out and achieve the  
7 purposes of this chapter.

8 (c) The commissioner may not waive, and nothing in this  
9 section constitutes a waiver of, the commissioner's authority to  
10 conduct an examination or investigation or otherwise take  
11 independent action authorized by this chapter or a rule adopted or  
12 order issued under this chapter to enforce compliance with  
13 applicable state or federal law.

14 (d) A joint examination or investigation, or acceptance of  
15 an examination or investigation report, does not waive an  
16 examination assessment provided for in this chapter.

17 (e) Chapter 2254, Government Code, does not apply to a  
18 contract or agreement entered into under this section.

19 Sec. 151.106. CONSENT TO SERVICE OF PROCESS. A license  
20 holder, an authorized delegate, or a person who knowingly engages  
21 in activities that are regulated and require a license under this  
22 chapter, with or without filing an application for a license or  
23 holding a license under this chapter, is considered to have  
24 consented to the jurisdiction of the courts of this state for all  
25 actions arising under this chapter.

26 [Sections 151.107-151.200 reserved for expansion]

SUBCHAPTER C. GENERAL QUALIFICATIONS AND PROVISIONS

APPLICABLE TO MONEY SERVICES LICENSES

Sec. 151.201. SCOPE. This subchapter sets out the general qualifications and provisions that apply to a money services license, regardless of whether the license is a money transmission license or a currency exchange license. Subchapters D and E set forth the additional qualifications and provisions that apply specifically to a money transmission license. Subchapter F sets forth the additional qualifications and provisions that apply specifically to a currency exchange license.

Sec. 151.202. QUALIFICATIONS FOR LICENSE. (a) Subject to Subsections (b) and (c), to qualify for a license under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

(1) the financial responsibility and condition, financial and business experience, competence, character, and general fitness of the applicant justify the confidence of the public and warrant the belief that the applicant will conduct business in compliance with this chapter and the rules adopted under this chapter and other applicable state and federal law;

(2) the issuance of the license is in the public interest;

(3) the applicant, a principal of the applicant, or a person in control of the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter;

1           (4) the applicant, if a partnership, and any partner  
2 that would generally be liable for the obligations of the  
3 partnership, does not owe a delinquent federal tax;

4           (5) the applicant, if a corporation:

5                 (A) is in good standing and statutory compliance  
6 in the state or country of incorporation;

7                 (B) is authorized to engage in business in this  
8 state; and

9                 (C) does not owe any delinquent franchise or  
10 other taxes to this state;

11           (6) the applicant, if not a corporation, is properly  
12 registered under the laws of this state or another state or country  
13 and, if required, is authorized to engage in business in this state;  
14 and

15           (7) the applicant, a principal of the applicant, or a  
16 principal of a person in control of the applicant is not listed on  
17 the specifically designated nationals and blocked persons list  
18 prepared by the United States Department of the Treasury, or  
19 designated successor agency, as a potential threat to commit or  
20 fund terrorist acts.

21           (b) In determining whether an applicant has demonstrated  
22 satisfaction of the qualifications identified in Subsection  
23 (a)(1), the commissioner shall consider the financial  
24 responsibility and condition, financial and business experience,  
25 competence, character, and general fitness of each principal of,  
26 person in control of, principal of a person in control of, and  
27 proposed responsible individual of the applicant and may deny

1 approval of the application on the basis that the applicant has  
2 failed to demonstrate satisfaction of the requisite qualifications  
3 with respect to one or more of those persons.

4 (c) The commissioner may not issue a license to an applicant  
5 if the applicant or one of the following persons has been convicted  
6 within the preceding 10 years of a criminal offense specified in  
7 Subsection (e):

8 (1) if the applicant is an individual, the spouse or  
9 proposed responsible individual or individuals of the applicant;

10 (2) if the applicant is an entity that is wholly owned,  
11 directly or indirectly, by a single individual, the spouse of the  
12 individual; or

13 (3) if the applicant is a person other than an  
14 individual, a principal of, person in control of, principal of a  
15 person in control of, or proposed responsible individual or  
16 individuals of the applicant.

17 (d) The commissioner, on a finding that the conviction does  
18 not reflect adversely on the present likelihood that the applicant  
19 will conduct business in compliance with this chapter, rules  
20 adopted under this chapter, and other applicable state and federal  
21 law, may waive a disqualification under Subsection (c) based on the  
22 conviction of a spouse or a corporate applicant or corporate person  
23 in control of an applicant.

24 (e) For purposes of Subsection (c), a disqualifying  
25 conviction is a conviction for a felony criminal offense:

26 (1) under state or federal law that involves or  
27 relates to:

1                   (A) deception, dishonesty, or defalcation;

2                   (B) money transmission or other money services,  
3 including a reporting, recordkeeping or registration requirement  
4 of the Bank Secrecy Act, the USA PATRIOT ACT, or Chapter 271;

5                   (C) money laundering, structuring, or a related  
6 financial crime;

7                   (D) drug trafficking; or

8                   (E) terrorist funding; and

9                   (2) under a similar law of a foreign country unless the  
10 applicant demonstrates to the satisfaction of the commissioner that  
11 the conviction was based on extenuating circumstances unrelated to  
12 the person's reputation for honesty and obedience to law.

13                  (f) For purposes of Subsection (c), a person is considered  
14 to have been convicted of an offense if the person has been found  
15 guilty or pleaded guilty or nolo contendere to the charge or has  
16 been placed on probation or deferred adjudication without regard to  
17 whether a judgment of conviction has been entered by the court.

18                  Sec. 151.203. APPLICATION FOR LICENSE. (a) An application  
19 for a license under this chapter must be made under oath and in the  
20 form and medium required by the commissioner. The application must  
21 contain:

22                   (1) the legal name and residential and business  
23 address of the applicant and each principal of the applicant;

24                   (2) the taxpayer identification number, social  
25 security number, driver's license number, or other identifying  
26 information the commissioner requires of the applicant and each  
27 principal of the applicant; and

1           (3) any other information or documentation the  
2 commissioner reasonably requires to determine whether the  
3 applicant qualifies for and should be issued the license for which  
4 application is made.

5           (b) The commissioner, at the time the application is  
6 submitted or in connection with an investigation of the application  
7 under Section 151.204, may require the applicant, the spouse of the  
8 applicant, a principal of, individual who is a person in control of,  
9 or proposed responsible individual of the applicant, or any other  
10 individual associated with the applicant and the proposed licensed  
11 activities, to provide the department a complete set of  
12 fingerprints for purposes of a criminal background investigation.

13           (c) An applicant must certify in writing on the application  
14 that the applicant and each principal of, person in control of, and  
15 proposed responsible individual of the applicant:

16                 (1) is familiar with and agrees to fully comply with  
17 all applicable state and federal laws and regulations pertaining to  
18 the applicant's proposed money services business, including this  
19 chapter, relevant provisions of the Bank Secrecy Act, the USA  
20 PATRIOT ACT, and Chapter 271;

21                 (2) has not within the preceding three years knowingly  
22 failed to file or evaded the obligation to file a report, including  
23 a currency transaction or suspicious activity report required by  
24 the Bank Secrecy Act, the USA PATRIOT ACT, or Chapter 271; and

25                 (3) has not knowingly accepted money for transmission  
26 or exchange in which a portion of the money was derived from an  
27 illegal transaction or activity.

1       (d) The commissioner may waive an application requirement  
2 or permit the submission of substituted information in lieu of the  
3 information generally required in an application, either with  
4 respect to a specific applicant or a category of applicants, if the  
5 commissioner determines that the waiver or substitution of  
6 information is consistent with achievement of the purposes of this  
7 chapter.

8       Sec. 151.204. PROCESSING AND INVESTIGATION OF APPLICATION.

9       (a) An application for a license under this chapter shall be  
10 processed and acted on according to the time periods established by  
11 commission rule.

12       (b) On receipt of an application that meets the requirements  
13 of Section 151.203 and Section 151.304 or 151.504, as applicable,  
14 the commissioner shall investigate the applicant to determine  
15 whether the prescribed qualifications have been met. The  
16 commissioner may:

17               (1) conduct an on-site investigation of the applicant;  
18               (2) employ a screening service to assist with the  
19 investigation;

20               (3) to the extent the commissioner considers  
21 reasonably necessary to evaluate the application and the  
22 applicant's qualifications, investigate the financial  
23 responsibility and condition, financial and business experience,  
24 character and general fitness of each principal of, person in  
25 control of, principal of a person in control of, or proposed  
26 responsible individual of the applicant or any other person that is  
27 or will be associated with the applicant's licensed activities in



1 this state; or

2 (4) require additional information and take other  
3 action the commissioner considers reasonably necessary.

4 (c) The commissioner may collect from the applicant the  
5 reasonable expenses of an on-site examination or third-party  
6 investigation. Additionally, depending on the nature and extent of  
7 the investigation required in connection with a particular  
8 application, the commissioner may require an applicant to pay a  
9 nonrefundable investigation fee in an amount established by  
10 commission rule.

11 (d) The commissioner may suspend consideration of an  
12 application for a license if the applicant or a principal of, person  
13 in control of, or proposed responsible individual of the applicant  
14 is the subject of a pending state or federal criminal prosecution,  
15 state or federal government enforcement action, or state or federal  
16 asset forfeiture proceeding until the conclusion of the  
17 prosecution, action, or proceeding.

18 Sec. 151.205. ISSUANCE OF LICENSE. (a) The commissioner  
19 shall issue a license if the commissioner, with respect to the  
20 license for which application has been made, finds that:

21 (1) the applicant meets the prescribed qualifications  
22 and it is reasonable to believe that the applicant's business will  
23 be conducted fairly and lawfully, according to applicable state and  
24 federal law, and in a manner commanding the public's trust and  
25 confidence;

26 (2) the issuance of the license is in the public  
27 interest;

1           (3) the documentation and forms required to be  
2 submitted by the applicant are acceptable; and

3           (4) the applicant has satisfied all requirements for  
4 licensure.

5           (b) If the commissioner finds that the applicant for any  
6 reason fails to possess the qualifications or satisfy the  
7 requirements for the license for which application is made, the  
8 commissioner shall inform the applicant in writing that the  
9 application is denied and state the reasons for the denial. The  
10 applicant may appeal the denial by filing a written request for a  
11 hearing with the commissioner not later than the 30th day after the  
12 date the notice is mailed. A hearing on the denial must be held not  
13 later than the 45th day after the date the commissioner receives the  
14 written request unless the administrative law judge extends the  
15 period for good cause or the parties agree to a later hearing date.  
16 The hearing is considered a contested case hearing and is subject to  
17 Section 151.801.

18           Sec. 151.206. TRANSFER OR ASSIGNMENT OF LICENSE. A license  
19 issued under this chapter may not be transferred or assigned.

20           Sec. 151.207. RENEWAL OF LICENSE. (a) Regardless of the  
21 date on which a license under this chapter is issued, the license  
22 expires on August 15 of each year unless the license is renewed in  
23 accordance with this section or is previously surrendered by the  
24 license holder or suspended or revoked by the commissioner.

25           (b) As a condition of renewal, a license holder must  
26 continue to possess the qualifications and satisfy the requirements  
27 that apply to an applicant for a new money transmission license or

currency exchange license, as applicable. Additionally, not later than July 1 of each year, a license holder must:

(1) pay an annual renewal fee in an amount established by commission rule; and

(2) submit a renewal report that is under oath, is in the form and medium required by the commissioner, and contains:

(A) if the license is a money transmission license, an audited unconsolidated financial statement dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year;

(B) if the license is a currency exchange license, a financial statement, audited or unaudited, dated as of the last day of the license holder's fiscal year that ended in the immediately preceding calendar year; and

(C) documentation and certification, or any other information the commissioner reasonably requires to determine the security, net worth, permissible investments, and other requirements the license holder must satisfy and whether the license holder continues to meet the qualifications and requirements for licensure.

(c) If the department does not receive a license holder's renewal fee and complete renewal report on or before July 1, the commissioner shall notify the license holder in writing that:

(1) the license holder has until August 15 to submit the renewal report and pay the renewal fee; and

(2) the license holder must pay a late fee, in an amount that is established by commission rule and not subject to

1 appeal, for each business day after July 1 that the commissioner  
2 does not receive the completed renewal report and renewal fee.

3 (d) If the license holder fails to submit the completed  
4 renewal report and pay the renewal fee and any late fee due, the  
5 license expires effective 5 p.m. central daylight time on August  
6 15, and the license holder must cease and desist from engaging in  
7 the business of money transmission or currency exchange, as  
8 applicable, as of that time. The expiration of a license is not  
9 subject to appeal.

10 (e) On timely receipt of a license holder's complete renewal  
11 report, renewal fee, and any late fee due, the department shall  
12 review the report and, if necessary, investigate the business and  
13 records of the license holder. On completion of the review and  
14 investigation, if any, the commissioner may:

15 (1) renew the license;

16 (2) impose conditions on the renewal of the license  
17 the commissioner may consider reasonably necessary or appropriate;  
18 or

19 (3) suspend or revoke the license on the basis of a  
20 ground specified in Section 151.703.

21 (f) On written application and for good cause shown, the  
22 commissioner may extend the time for filing the fee and report  
23 required under this section.

24 (g) The holder or principal of or the person in control of  
25 the holder of an expired license, or the holder or principal of or  
26 person in control of the holder of a license surrendered under  
27 Section 151.208, that wishes to conduct activities for which a

1 license is required under this chapter must file a new license  
2 application and satisfy all requirements for licensure that apply  
3 at the time the new application is filed.

4 Sec. 151.208. SURRENDER OF LICENSE. (a) A license holder  
5 may surrender the license holder's license by delivering the  
6 original license to the commissioner along with a written notice of  
7 surrender that includes the location at which the license holder's  
8 records will be stored and the name, address, telephone number, and  
9 other contact information for an individual who is authorized to  
10 provide access to the records.

11 (b) A license holder shall surrender the license holder's  
12 license if the license holder becomes ineligible for a license  
13 under Section 151.202(c).

14 (c) The surrender of a license does not reduce or eliminate  
15 a license holder's civil or criminal liability arising from any  
16 acts or omissions before the surrender of the license, including  
17 any administrative action undertaken by the commissioner to deny  
18 the renewal of a license, to revoke or suspend a license, to assess  
19 an administrative penalty, to order the payment of restitution, or  
20 to exercise any other authority under this chapter. Further, the  
21 surrender of a license does not release the security required of the  
22 license holder under Section 151.308 or 151.506.

23 Sec. 151.209. REFUNDS. A fee or cost paid under this  
24 chapter in connection with an application or renewal is not  
25 refundable.

26 [Sections 151.210-151.300 reserved for expansion]

27 SUBCHAPTER D. MONEY TRANSMISSION LICENSE

1       Sec. 151.301. DEFINITIONS. (a) This section defines terms  
2 that apply to an applicant for or holder of a money transmission  
3 license issued under this subchapter.

4       (b) In this subchapter:

5           (1) "Currency" means the coin and paper money of the  
6 United States or another country that is designated as legal tender  
7 and circulates and is customarily used and accepted as a medium of  
8 exchange in the country of issuance.

9           (2) "Electronic instrument" means a card or other  
10 tangible object for the transmission, transfer, or payment of money  
11 or monetary value, that contains an electronic chip or strip for the  
12 storage of information or that provides access to information.

13           (3) "Money" or "monetary value" means currency or a  
14 claim that can be converted into currency through a financial  
15 institution, electronic payments network, or other formal or  
16 informal payment system.

17           (4) "Money transmission" means the receipt of money or  
18 monetary value by any means in exchange for a promise to make the  
19 money or monetary value available at a later time or different  
20 location. The term:

21               (A) includes:

22                   (i) selling or issuing stored value or  
23 payment instruments, including checks, money orders, and  
24 traveler's checks;

25                   (ii) receiving money or monetary value for  
26 transmission, including by payment instrument, wire, facsimile,  
27 electronic transfer, or ACH debit;

1                    (iii) providing third-party bill paying  
2 services; or

3                    (iv) receiving currency or an instrument  
4 payable in currency to physically transport the currency or its  
5 equivalent from one location to another by motor vehicle or other  
6 means of transportation or through the use of the mail or a  
7 shipping, courier, or other delivery service; and

8                    (B) does not include the provision solely of  
9 online or telecommunication services or connection services to the  
10 Internet.

11                    (5) "Outstanding" means:

12                    (A) with respect to a payment instrument or  
13 stored value, a payment instrument or stored value that has been  
14 issued and sold in the United States directly by the license holder,  
15 or sold by an authorized delegate of the license holder in the  
16 United States and reported to the license holder, that has not yet  
17 been paid by or for the license holder; or

18                    (B) with respect to transmission, a money  
19 transmission for which the license holder, directly or through an  
20 authorized delegate of the license holder, has received money or  
21 monetary value from the customer for transmission, but has not yet  
22 completed the money transmission by delivering the money or  
23 monetary value to the person designated by the customer or refunded  
24 the money or monetary value to the customer.

25                    (6) "Payment instrument" means a written or electronic  
26 equivalent of a check, draft, money order, traveler's check, or  
27 other written or electronic instrument, service, or device for the

1 transmission or payment of money or monetary value, sold or issued  
2 to one or more persons, regardless of whether negotiable. The term  
3 does not include an instrument, service, or device that:

4 (A) transfers money directly from a purchaser to  
5 a creditor of the purchaser or to an agent of the creditor;

6 (B) is redeemed by the issuer in goods or  
7 services or a cash or credit refund under circumstances not  
8 designed to evade the obligations and responsibilities imposed by  
9 this chapter; or

10 (C) is a credit card voucher or letter of credit.

11 (7) "Receive" means to obtain possession of money or  
12 monetary value in a manner that cannot be reversed through the  
13 exercise of routine contractual or statutory rights.

14 (8) "Stored value" means monetary value evidenced by  
15 an electronic record that is prefunded and for which value is  
16 reduced on each use. The term does not include an electronic record  
17 that is:

18 (A) loaded with points, miles, or other  
19 nonmonetary value; or

20 (B) not sold to the public but distributed as a  
21 reward or charitable donation.

22 (9) "Unsafe or unsound act or practice" means a  
23 practice of or conduct by a license holder or an authorized delegate  
24 of the license holder that creates the likelihood of material loss,  
25 insolvency, or dissipation of the license holder's assets, or that  
26 otherwise materially prejudices the interests of the license holder  
27 or the license holder's customers.



1       Sec. 151.302. LICENSE REQUIRED. (a) A person may not  
2 engage in the business of money transmission or advertise, solicit,  
3 or hold itself out as a person that engages in the business of money  
4 transmission unless the person:

5               (1) is licensed under this subchapter;

6               (2) is an authorized delegate of a person licensed  
7 under this subchapter, appointed by the license holder in  
8 accordance with Section 151.402;

9               (3) is excluded from licensure under Section 151.003;  
10 or

11               (4) has been granted an exemption under Subsection  
12 (c).

13       (b) For purposes of this chapter:

14               (1) a person engages in the business of money  
15 transmission if the person conducts money transmission for persons  
16 located in this state and receives compensation or expects to  
17 receive compensation, directly or indirectly, for conducting the  
18 transmissions; and

19               (2) a person solicits, advertises, or holds itself out  
20 as a person that engages in the business of money transmission if  
21 the person represents that the person will conduct money  
22 transmission for persons located in this state.

23       (c) On application and a finding that the exemption is in  
24 the public interest, the commissioner may exempt a person that:

25               (1) incidentally engages in the money transmission  
26 business only to the extent reasonable and necessary to accomplish  
27 a primary business objective unrelated to the money transmission

1 business;

2 (2) does not advertise or offer money transmission  
3 services to the public except to the extent reasonable and  
4 necessary to fairly advertise or offer the person's primary  
5 business services; and

6 (3) either transmits money exclusively in connection  
7 with commercial contracts in interstate commerce or does not charge  
8 a fee to transmit money or transmits money without a fee as an  
9 inducement for customer participation in the person's primary  
10 business.

11 (d) A license holder may engage in the money transmission  
12 business at one or more locations in this state owned, directly or  
13 indirectly by the license holder, or through one or more authorized  
14 delegates, or both, under a single license granted to the license  
15 holder.

16 Sec. 151.303. ADDITIONAL QUALIFICATIONS. In addition to  
17 the general qualifications for licensure set forth in Section  
18 151.202, an applicant for a money transmission license must  
19 demonstrate to the satisfaction of the commissioner that:

20 (1) the applicant has and will maintain the minimum  
21 net worth required under Section 151.307;

22 (2) the applicant's financial condition will enable  
23 the applicant to safely and soundly engage in the business of money  
24 transmission; and

25 (3) the applicant does not engage in any activity or  
26 practice that adversely affects the applicant's safety and  
27 soundness.

1       Sec. 151.304. APPLICATION AND ACCOMPANYING FEE,  
2       STATEMENTS, AND SECURITY. (a) An applicant for a money  
3       transmission license must submit an application in accordance with  
4       Section 151.203.

5       (b) At the time an application for a money transmission  
6       license is submitted, an applicant must file with the department:

7               (1) an application fee in the amount established by  
8       commission rule;

9               (2) audited financial statements that are  
10       satisfactory to the commissioner for purposes of determining  
11       whether the applicant has the minimum net worth required under  
12       Section 151.307 and is likely to maintain the required minimum net  
13       worth if a license is issued; and

14               (3) security in the amount of \$300,000, that meets the  
15       requirements of Section 151.308, and an undertaking or agreement  
16       that the applicant will increase or supplement the security to  
17       equal the aggregate security required by the commissioner under  
18       that section before the issuance of the license and the start of  
19       operations.

20       Sec. 151.305. INVESTIGATION AND ACTION ON APPLICATION. The  
21       commissioner shall investigate the applicant and act on the  
22       application in accordance with Sections 151.204 and 151.205.

23       Sec. 151.306. TEMPORARY LICENSE. (a) The commissioner may  
24       issue a temporary license to a person that is engaging in money  
25       transmission, but has not obtained a license under this subchapter,  
26       if the person:

27               (1) certifies in writing that the person qualifies for

1 the license and will submit a completed license application not  
2 later than the 60th day after the date the temporary license is  
3 issued;

4 (2) submits a recent financial statement acceptable to  
5 the commissioner that reflects the minimum net worth required under  
6 Section 151.307;

7 (3) provides security that meets the requirements of  
8 Section 151.308 in an amount specified by the commissioner, but not  
9 less than \$300,000;

10 (4) agrees in writing that, until a permanent license  
11 is issued, the person will engage only in activities being  
12 conducted at existing locations; and

13 (5) pays the application fee and a nonrefundable  
14 temporary license fee in the amount established by commission rule.

15 (b) The effective period for a temporary license may not  
16 exceed 90 days from the date the license is issued, provided that  
17 the commissioner may extend the period for not more than an  
18 additional 30 days if necessary to complete the processing of a  
19 timely filed application for which approval is likely.

20 Sec. 151.307. NET WORTH. (a) An applicant for a money  
21 transmission license must possess, and a money transmission license  
22 holder must maintain at all times, a minimum net worth computed in  
23 accordance with generally accepted accounting principles of:

24 (1) \$100,000, if business is proposed to be or is  
25 conducted, directly or through an authorized delegate, at four or  
26 fewer locations; or

27 (2) \$500,000, if business is proposed to be or is

1 conducted, directly or through an authorized delegate, at five or  
2 more locations.

3 (b) The commissioner may increase the amount of net worth  
4 required of an applicant or license holder, up to a maximum of \$1  
5 million, if the commissioner determines, with respect to the  
6 applicant or license holder, that a higher net worth is necessary to  
7 achieve the purposes of this chapter based on:

8 (1) the nature and volume of the projected or  
9 established business;

10 (2) the number of locations at or through which money  
11 transmission is or will be conducted;

12 (3) the amount, nature, quality, and liquidity of its  
13 assets;

14 (4) the amount and nature of its liabilities;

15 (5) the history of its operations and prospects for  
16 earning and retaining income;

17 (6) the quality of its operations;

18 (7) the quality of its management;

19 (8) the nature and quality of its principals and  
20 persons in control;

21 (9) the history of its compliance with applicable  
22 state and federal law; and

23 (10) any other factor the commissioner considers  
24 relevant.

25 Sec. 151.308. SECURITY. (a) An applicant for a money  
26 transmission license must provide, and a money transmission license  
27 holder must maintain at all times, security consisting of a surety

1 bond, an irrevocable letter of credit, or a deposit instead of a  
2 bond in accordance with this section.

3 (b) The amount of the required security is the greater of  
4 \$300,000 or an amount equal to one percent of the license holder's  
5 total yearly dollar volume of money transmission business in this  
6 state or the applicant's projected total volume of business in this  
7 state for the first year of licensure, up to a maximum of \$2  
8 million. When the amount of the required security exceeds \$1  
9 million, the applicant or license holder may, in the alternative,  
10 provide security in the amount of \$1 million, plus a dollar for  
11 dollar increase in the net worth of the applicant or license holder  
12 over the amount required under Section 151.307, up to a total amount  
13 of \$2 million.

14 (c) The security must:

15 (1) be in a form satisfactory to the commissioner;  
16 (2) be payable to any claimant or to the commissioner,  
17 on behalf of a claimant or this state, for any liability arising out  
18 of the license holder's money transmission business in this state,  
19 incurred under, subject to, or by virtue of this chapter;

20 (3) be conditioned on the faithful compliance of the  
21 license holder or the principals, responsible individuals,  
22 employees and authorized delegates of the license holder with this  
23 chapter or any rule adopted or order issued under this chapter; and

24 (4) if the security is a bond, be issued by a qualified  
25 surety company authorized to engage in business in this state and  
26 acceptable to the commissioner or, if the security is an  
27 irrevocable letter of credit, be issued by a financial institution

1 acceptable to the commissioner.

2 (d) A claimant may bring suit directly on the security, or  
3 the commissioner may bring suit on behalf of the claimant or the  
4 state, either in one action or in successive actions.

5 (e) The commissioner may collect from the security or  
6 proceeds of the security any delinquent fee, assessment, cost,  
7 penalty, or other amount imposed on and owed by a license holder.  
8 If the security is a surety bond, the commissioner shall give the  
9 surety reasonable prior notice of a hearing to impose an  
10 administrative penalty against the license holder, provided that a  
11 surety may not be considered an interested, aggrieved, or affected  
12 person for purposes of an administrative proceeding under Section  
13 151.801 or Chapter 2001, Government Code.

14 (f) The security remains in effect until canceled, which may  
15 occur only after providing 30 days' written notice to the  
16 commissioner. Cancellation does not affect any liability incurred  
17 or accrued during the period covered by the security.

18 (g) The security shall cover claims for at least five years  
19 after the license holder surrenders its license or otherwise ceases  
20 to engage in activities for which a license is required under this  
21 subchapter. However, the commissioner may permit the amount of the  
22 security to be reduced or eliminated before that time to the extent  
23 that the amount of the license holder's obligations to the  
24 department and to purchasers in this state is reduced. The  
25 commissioner may permit a license holder to substitute another form  
26 of security when the license holder ceases to provide money  
27 transmission in this state.

1       (h) If the commissioner at any time reasonably determines  
2 that the required security is insecure, deficient in amount, or  
3 exhausted in whole or in part, the commissioner by written order  
4 shall require the license holder to file or make new or additional  
5 security to comply with this section.

6       (i) Instead of providing all or part of the amount of the  
7 security required by this section, an applicant or license holder  
8 may deposit, with a financial institution possessing trust powers  
9 that is authorized to conduct a trust business in this state and is  
10 acceptable to the commissioner, an aggregate amount of United  
11 States currency, certificates of deposit, or other cash equivalents  
12 that equals the total amount of the required security or the  
13 remaining part of the security. The deposit:

14               (1) must be held in trust in the name of and be pledged  
15 to the commissioner;

16               (2) must secure the same obligations as the security;  
17 and

18               (3) is subject to other conditions and terms the  
19 commissioner may reasonably require.

20       (j) The security is considered by operation of law to be  
21 held in trust for the benefit of this state and any individual to  
22 whom an obligation arising under this chapter is owed, and may not  
23 be considered an asset or property of the license holder in the  
24 event of bankruptcy, receivership, or a claim against the license  
25 holder unrelated to the license holder's obligations under this  
26 chapter.

27       Sec. 151.309. PERMISSIBLE INVESTMENTS. (a) A money



1 transmission license holder must maintain at all times permissible  
2 investments that have an aggregate market value computed in  
3 accordance with generally accepted accounting principles in an  
4 amount not less than:

5 (1) if the license holder has a net worth of less than  
6 \$5 million, the aggregate face amount of the license holder's  
7 average outstanding money transmission obligations in the United  
8 States, computed in the manner prescribed by commission rule; or

9 (2) if the license holder has a net worth of \$5 million  
10 or more, 50 percent of the amount required by Subdivision (1).

11 (b) Except to the extent limited by Subsection (d), the  
12 following constitute a permissible investment for purposes of this  
13 section:

14 (1) 40 percent of the receivables due a license holder  
15 from authorized delegates resulting from money transmission under  
16 this chapter that is not past due or doubtful of collection;

17 (2) cash in demand or interest-bearing accounts with a  
18 federally insured depository institution, including certificates  
19 of deposit;

20 (3) certificates of deposit or senior debt obligations  
21 of a domestic federally insured depository institution that are  
22 readily marketable and insured by an agency of the federal  
23 government;

24 (4) investment grade bonds and other legally created  
25 general obligations of a state, an agency or political subdivision  
26 of a state, the United States, or an instrumentality of the United  
27 States;

1           (5) obligations that a state, an agency or political  
2 subdivision of a state, the United States, or an instrumentality of  
3 the United States has unconditionally agreed to purchase, insure,  
4 or guarantee and that bear a rating of one of the three highest  
5 grades as defined by a nationally recognized organization that  
6 rates securities;

7           (6) shares in a money market mutual fund if the mutual  
8 fund, under the terms of the mutual fund's governing documents, is  
9 authorized to invest only in securities of the type described by  
10 Subdivisions (4) and (5) or permitted by commission rule; and

11           (7) other assets and investments permitted by rule of  
12 the commission or approved by the commissioner in writing, based on  
13 a determination that the assets or investments have a safety  
14 substantially equivalent to other permissible investments.

15           (c) In addition to investments listed in Subsection (b), a  
16 permissible investment for purposes of Subsection (a) includes:

17                   (1) the security provided under Section 151.308;

18                   (2) a surety bond or letter of credit in addition to  
19 the security provided under Section 151.308, if the additional  
20 surety bond or letter of credit satisfies the requirements of  
21 Section 151.308; and

22                   (3) that portion of a surety bond maintained for the  
23 benefit of the purchasers of the license holder's outstanding money  
24 transmission obligations in another state that is not in excess of  
25 the amount of the outstanding obligations in that state, provided:

26                           (A) the license holder maintains a surety bond or  
27 letter of credit or has on hand other permissible investments, or a

1 combination of investments, in an amount sufficient to satisfy the  
2 requirements of Subsection (a) with respect to the outstanding  
3 money transmission obligations in this state; and

4 (B) the surety bond is issued by a surety rated  
5 within the top two rating categories of a nationally recognized  
6 United States rating service.

7 (d) The commissioner, with respect to a license holder, may  
8 limit or disallow for purposes of determining compliance with  
9 Subsection (a) an investment, surety bond, or letter of credit  
10 otherwise permitted by this section if the commissioner determines  
11 it to be unsatisfactory for investment purposes or to pose a  
12 significant supervisory concern.

13 (e) A permissible investment subject to this section, even  
14 if commingled with other assets of the license holder, is  
15 considered by operation of law to be held in trust for the benefit  
16 of any individual to whom an obligation arising under this chapter  
17 is owed, and may not be considered an asset or property of the  
18 license holder in the event of bankruptcy, receivership, or a claim  
19 against the license holder unrelated to any of the license holder's  
20 obligations under this chapter.

21 [Sections 151.310-151.400 reserved for expansion]

22 SUBCHAPTER E. CONDUCT OF MONEY TRANSMISSION BUSINESS

23 Sec. 151.401. LIABILITY OF LICENSE HOLDER. A money  
24 transmission license holder is liable for the payment of all money  
25 or monetary value received for transmission either directly or  
26 through an authorized delegate appointed in accordance with Section  
27 151.402.

1       Sec. 151.402. CONDUCT OF BUSINESS THROUGH AUTHORIZED  
2 DELEGATE. (a) A money transmission license holder may conduct  
3 business regulated under this chapter through an authorized  
4 delegate appointed by the license holder in accordance with this  
5 section. A license holder is responsible for the acts of the  
6 authorized delegate, of which the license holder has or reasonably  
7 should have knowledge, that are conducted pursuant to the authority  
8 granted by the license holder and that relate to the license  
9 holder's money transmission business.

10       (b) Before a license holder is authorized to conduct  
11 business through an authorized delegate or allows a person to act as  
12 the license holder's authorized delegate, the license holder must:

13               (1) adopt, and update as necessary, written policies  
14 and procedures designed to ensure that the license holder's  
15 authorized delegate complies with applicable state and federal law;

16               (2) enter into a written contract that complies with  
17 Subsection (c); and

18               (3) conduct a reasonable risk-based background  
19 investigation sufficient for the license holder to determine  
20 whether the authorized delegate has complied with applicable state  
21 and federal law.

22       (c) The written contract required by Subsection (b)(2) must  
23 be signed by the license holder and the authorized delegate and, at  
24 a minimum, must:

25               (1) appoint the person signing the contract as the  
26 license holder's authorized delegate with the authority to conduct  
27 money transmission on behalf of the license holder;

1           (2) set forth the nature and scope of the relationship  
2 between the license holder and the authorized delegate and the  
3 respective rights and responsibilities of the parties;

4           (3) require the authorized delegate to certify that  
5 the delegate is familiar with and agrees to fully comply with all  
6 applicable state and federal laws, rules, and regulations  
7 pertaining to money transmission, including this chapter and rules  
8 adopted under this chapter, relevant provisions of the Bank Secrecy  
9 Act and the USA PATRIOT ACT, and Chapter 271;

10           (4) require the authorized delegate to remit and  
11 handle money and monetary value in accordance with Sections  
12 151.403(b) and (c);

13           (5) impose a trust on money and monetary value  
14 received in accordance with Section 151.404;

15           (6) require the authorized delegate to prepare and  
16 maintain records as required by this chapter or a rule adopted under  
17 this chapter or as reasonably requested by the commissioner;

18           (7) acknowledge that the authorized delegate consents  
19 to examination or investigation by the commissioner;

20           (8) state that the license holder is subject to  
21 regulation by the commissioner and that, as part of that  
22 regulation, the commissioner may suspend or revoke an authorized  
23 delegate designation or require the license holder to terminate an  
24 authorized delegate designation;

25           (9) acknowledge receipt of the written policies and  
26 procedures required under Subsection (b)(1); and

27           (10) acknowledge that the authorized delegate has been

provided regulatory website addresses through which the authorized delegate can access this chapter and rules adopted under this chapter and the Bank Secrecy Act, the USA PATRIOT ACT, and Chapter 271.

(d) A license holder must report to the commissioner the theft or loss of payment instruments or stored value from the license holder or an authorized delegate in this state if the total value of the instruments or stored value exceeds \$10,000. The license holder must make the report as soon as the license holder has knowledge of the theft or loss.

(e) A license holder must notify the license holder's authorized delegates and require the delegates to take any action required by the commissioner if the license holder:

(1) fails to renew the license holder's license; or

(2) is subject to an emergency or final order that affects the conduct of the license holder's business through an authorized delegate.

(f) A license holder must maintain a current list of authorized delegates located in this state that includes the name and business address of each delegate and must provide the list to the commissioner on request. A license holder that engages in business through 11 or more authorized delegates located in this state must include on the license holder's website a list of the names and addresses of the authorized delegates of the license holder located in this state and the delegates' business addresses. The license holder must update the list quarterly.

(g) The commission by rule may exempt from one or more of the

1 requirements of this chapter an authorized delegate that is a  
2 federally insured financial institution excluded under Section  
3 151.003(3) or a foreign bank branch or agency excluded under  
4 Section 151.003(4).

5 Sec. 151.403. AUTHORIZED DELEGATE CONDUCT. (a) An  
6 authorized delegate of a license holder:

7 (1) is under a duty to and must act only as authorized  
8 under the contract with the license holder and in strict compliance  
9 with the license holder's written policies and procedures;

10 (2) must not commit fraud or misrepresentation or make  
11 any fraudulent or false statement or misrepresentation to a license  
12 holder or the commissioner;

13 (3) must cooperate with an investigation or  
14 examination conducted by the commissioner and is considered to have  
15 consented to the commissioner's examination of the delegate's books  
16 and records;

17 (4) must not commit an unsafe or unsound act or  
18 practice or conduct business in an unsafe and unsound manner;

19 (5) must, on discovery, immediately report to the  
20 license holder the theft or loss of payment instruments or stored  
21 value;

22 (6) must prominently display on the form prescribed by  
23 the commissioner a notice that indicates that the person is an  
24 authorized delegate of the license holder under this subchapter;  
25 and

26 (7) must cease to provide money services as an  
27 authorized delegate of a license holder or take other required

1 action immediately on receipt of notice from the commissioner or  
2 the license holder as provided by Section 151.402(e).

3 (b) An authorized delegate shall remit all money owed to the  
4 license holder:

5 (1) not later than the 10th business day after the date  
6 the authorized delegate receives the money;

7 (2) in accordance with the contract between the  
8 license holder and the authorized delegate; or

9 (3) as directed by the commissioner.

10 (c) Notwithstanding Subsection (b)(1), an authorized  
11 delegate may remit the money at a later date if the authorized  
12 delegate maintains on deposit with an office of a federally insured  
13 financial institution located in the United States an amount that:

14 (1) is in an account solely in the name of the license  
15 holder; and

16 (2) for each day by which the period before the  
17 remittance exceeds 10 business days, is not less than the  
18 outstanding obligations of the license holder routinely incurred by  
19 the authorized delegate on a daily basis.

20 (d) Any business for which a license is required under this  
21 subchapter that is conducted by an authorized delegate outside the  
22 scope of authority conferred in the contract between the authorized  
23 delegate and the license holder is unlicensed activity.

24 Sec. 151.404. TRUST IMPOSED. (a) A license holder shall  
25 hold in trust all money received for transmission directly or from  
26 an authorized delegate from the time of receipt until the time the  
27 transmission obligation is discharged. A trust resulting from the



1 license holder's actions is in favor of the persons to whom the  
2 related money transmission obligations are owed.

3 (b) A license holder's authorized delegate shall hold in  
4 trust all money received for transmission by or for the license  
5 holder from the time of receipt until the time the money is remitted  
6 by the authorized delegate to the license holder. A trust resulting  
7 from the authorized delegate's actions is in favor of the license  
8 holder.

9 (c) A license holder's authorized delegate may not  
10 commingle the money received for transmission by or for the license  
11 holder with the authorized delegate's own money or other property,  
12 except to use in the ordinary course of the delegate's business for  
13 the purpose of making change, if the money is accounted for at the  
14 end of each business day.

15 (d) If a license holder or the license holder's authorized  
16 delegate commingles any money received for transmission with money  
17 or other property owned or controlled by the license holder or  
18 delegate, all commingled money and other property are impressed  
19 with a trust as provided by this section in an amount equal to the  
20 amount of money received for transmission, less the amount of fees  
21 paid for the transmission.

22 (e) If the commissioner revokes a license holder's license  
23 under Section 151.703, all money held in trust by the license holder  
24 and the license holder's authorized delegates is assigned to the  
25 commissioner for the benefit of the persons to whom the related  
26 money transmission obligations are owed.

27 (f) Money of a license holder or authorized delegate

1 impressed with a trust under this section may not be considered an  
2 asset or property of the license holder or authorized delegate in  
3 the event of bankruptcy, receivership, or a claim against the  
4 license holder or authorized delegate unrelated to the license  
5 holder's or delegate's obligations under this chapter.

6 Sec. 151.405. DISCLOSURE REQUIREMENTS. (a) A license  
7 holder's name and mailing address or telephone number must be  
8 provided to the purchaser in connection with each money  
9 transmission transaction conducted by the license holder directly  
10 or through an authorized delegate.

11 (b) A license holder receiving currency or an instrument  
12 payable in currency for transmission must comply with Chapter 278.

13 [Sections 151.406-151.500 reserved for expansion]

14 SUBCHAPTER F. CURRENCY EXCHANGE LICENSE

15 Sec. 151.501. DEFINITIONS. (a) This section defines terms  
16 that apply specifically to an applicant for or holder of a currency  
17 exchange license issued under this subchapter.

18 (b) In this subchapter:

19 (1) "Currency" means the coin and paper money of the  
20 United States or any country that is designated as legal tender and  
21 circulates and is customarily used and accepted as a medium of  
22 exchange in the country of issuance.

23 (2) "Currency exchange" means exchanging the currency  
24 of one government for the currency of another government.

25 Sec. 151.502. LICENSE REQUIRED. (a) A person may not  
26 engage in the business of currency exchange or advertise, solicit,  
27 or hold itself out as providing currency exchange unless the

1 person:

2 (1) is licensed under this subchapter;

3 (2) is licensed for money transmission under  
4 Subchapter D;

5 (3) is an authorized delegate of a person licensed for  
6 money transmission under Subchapter D;

7 (4) is excluded under Section 151.003; or

8 (5) has been granted an exemption under Subsection  
9 (d).

10 (b) For purposes of this chapter, a person engages in the  
11 business of currency exchange if the person exchanges currency and  
12 receives compensation or expects to receive compensation, directly  
13 or indirectly, for the currency exchange.

14 (c) A license holder may engage in the currency exchange  
15 business at one or more locations in this state owned, directly or  
16 indirectly by the license holder, under a single license.

17 (d) On application and a finding that the exemption is in  
18 the public interest, the commissioner may exempt a retailer,  
19 wholesaler, or service provider that in the ordinary course of  
20 business accepts currency of a foreign country or government as  
21 payment for goods or services, provided that a person is not  
22 eligible for the exemption if:

23 (1) the value of the goods or services purchased in a  
24 single transaction exceeds \$10,000;

25 (2) the change given or made as a result of the  
26 transaction exceeds \$100;

27 (3) an attempt is made to structure a transaction in a

1 manner that evades the licensing requirements of this subchapter or  
2 avoids using a business licensed under this chapter;

3 (4) the person is engaged in the business of cashing  
4 checks, drafts, or other payment instruments for consideration and  
5 is not otherwise exempt from licensing under this chapter; or

6 (5) the person would not be eligible for a license  
7 under this chapter.

8 (e) In accordance with the investigation provisions of this  
9 chapter, the commissioner may examine a person to verify the  
10 person's exempt status under Subsection (d).

11 Sec. 151.503. QUALIFICATIONS. An applicant for a currency  
12 exchange license must have the qualifications set forth in Section  
13 151.202.

14 Sec. 151.504. APPLICATION AND ACCOMPANYING FEE AND  
15 SECURITY. (a) An applicant for a currency exchange license must  
16 submit an application in accordance with Section 151.203.

17 (b) At the time an application for a currency exchange  
18 license is submitted, an applicant must file with the department:

19 (1) an application fee in the amount established by  
20 commission rule; and

21 (2) security in the amount of \$2,500 that meets the  
22 requirements of Section 151.506.

23 Sec. 151.505. INVESTIGATION AND ACTION ON APPLICATION. The  
24 commissioner shall investigate the applicant and act on the  
25 application in accordance with Sections 151.204 and 151.205.

26 Sec. 151.506. SECURITY. An applicant for a currency  
27 exchange license must provide and a currency exchange license

1 holder must maintain at all times security in the amount of \$2,500  
2 that satisfies the requirements of and is subject to Sections  
3 151.308(c)-(j).

4 [Sections 151.507-151.600 reserved for expansion]

5 SUBCHAPTER G. EXAMINATIONS, REPORTS, AND RECORDS

6 Sec. 151.601. EXAMINATIONS. (a) The commissioner may  
7 examine a license holder or authorized delegate of a license holder  
8 as reasonably necessary or appropriate to administer and enforce  
9 this chapter and rules adopted and orders issued under this chapter  
10 and other applicable law, including the Bank Secrecy Act, the USA  
11 PATRIOT ACT, and Chapter 271.

12 (b) The commissioner may:

13 (1) conduct an examination annually or at other times  
14 as the commissioner may reasonably require;

15 (2) conduct an on-site examination or an off-site  
16 review of records;

17 (3) conduct an examination in conjunction with an  
18 examination conducted by representatives of other state agencies or  
19 agencies of another state or of the federal government;

20 (4) accept the examination report of another state  
21 agency or an agency of another state or of the federal government,  
22 or a report prepared by an independent accounting firm, which on  
23 being accepted is considered for all purposes as an official report  
24 of the commissioner; and

25 (5) summon and examine under oath a principal,  
26 responsible individual, or employee of a license holder or  
27 authorized delegate of a license holder and require the person to

1 produce records regarding any matter related to the condition and  
2 business of the license holder or authorized delegate.

3 (c) A license holder or authorized delegate of a license  
4 holder shall provide, and the commissioner shall have full and  
5 complete access to, all records the commissioner may reasonably  
6 require to conduct a complete examination. The records must be  
7 provided at the location and in the format specified by the  
8 commissioner.

9 (d) Unless otherwise directed by the commissioner, a  
10 license holder shall pay all costs reasonably incurred in  
11 connection with an examination of the license holder or the license  
12 holder's authorized delegate.

13 (e) Disclosure of information to the commissioner under an  
14 examination request does not waive or otherwise affect or diminish  
15 confidentiality or a privilege to which the information is  
16 otherwise subject. Information disclosed to the commissioner in  
17 connection with an examination is confidential under Section  
18 151.606.

19 Sec. 151.602. RECORDS. (a) A license holder must prepare,  
20 maintain, and preserve the following books, accounts, and other  
21 records for at least five years or another period as may be  
22 prescribed by rule of the commission:

23 (1) a record of each money transmission transaction or  
24 currency exchange transaction, as applicable;

25 (2) a general ledger posted in accordance with  
26 generally accepted accounting principles containing all asset,  
27 liability, capital, income, and expense accounts, unless directed

1 otherwise by the commissioner;

2 (3) bank statements and bank reconciliation records;

3 (4) all records and reports required by applicable  
4 state and federal law, including the reporting and recordkeeping  
5 requirements imposed by the Bank Secrecy Act, the USA PATRIOT ACT,  
6 and Chapter 271, and other federal and state laws pertaining to  
7 money laundering, drug trafficking, or terrorist funding; and

8 (5) any other records required by commission rule or  
9 reasonably requested by the commissioner to determine compliance  
10 with this chapter.

11 (b) The records required under this section may be:

12 (1) maintained in a photographic, electronic, or other  
13 similar form; and

14 (2) maintained at the license holder's principal place  
15 of business or another location as may be reasonably requested by  
16 the commissioner.

17 (c) An authorized delegate must prepare, maintain, and  
18 preserve the records required by commission rule or reasonably  
19 requested by the commissioner.

20 (d) The records required under this section are subject to  
21 inspection by the commissioner under Section 151.601.

22 (e) The records required under this section and the reports  
23 required under Section 151.603 must be in English and the financial  
24 information contained in the records and reports must be  
25 denominated in United States dollars.

26 Sec. 151.603. REPORTS. (a) An applicant or license holder  
27 shall file a written report with the commissioner not later than the

1 15th day after the date the applicant or license holder knows or has  
2 reason to know of a material change in the information reported in  
3 an application or renewal report. The report must describe the  
4 change and the anticipated impact of the change on the activities of  
5 the applicant or license holder in this state.

6 (b) A money transmission license holder shall prepare  
7 written reports and statements as follows:

8 (1) the renewal report required by Section  
9 151.207(b)(2), including an audited unconsolidated financial  
10 statement that is dated as of the last day of the license holder's  
11 fiscal year that ended in the immediately preceding calendar year;

12 (2) a quarterly interim financial statement and report  
13 regarding the permissible investments required to be maintained  
14 under Section 151.309 that reflect the license holder's financial  
15 condition and permissible investments as of the last day of the  
16 calendar quarter to which the statement and report relate and that  
17 are prepared not later than the 45th day after the last day of the  
18 calendar quarter; and

19 (3) any other report required by rule of the  
20 commission or reasonably requested by the commissioner to determine  
21 compliance with this chapter.

22 (c) A currency exchange license holder shall prepare a  
23 written report or statement as follows:

24 (1) the renewal report required by Section  
25 151.207(b)(2), including a financial statement that may be audited  
26 or unaudited and that is dated as of the last day of the license  
27 holder's fiscal year that ended in the immediately preceding



1 calendar year;

2 (2) a quarterly interim financial statement and  
3 transaction report that reflects the license holder's financial  
4 condition and currency exchange business as of the last day of the  
5 calendar quarter to which the statement and report relate and that  
6 are prepared not later than the 45th day after the last day of the  
7 calendar quarter; and

8 (3) any other report required by rule of the  
9 commission or reasonably requested by the commissioner to determine  
10 compliance with this chapter.

11 (d) A license holder shall file the statements and reports  
12 required under this section with the commissioner as required by  
13 this chapter, by commission rule, or as requested by the  
14 commissioner.

15 (e) On written application and for good cause shown, the  
16 commissioner may extend the time for preparing or filing a  
17 statement or report required under this section.

18 Sec. 151.604. EXTRAORDINARY REPORTING REQUIREMENTS. (a) A  
19 license holder shall file a written report with the commissioner  
20 not later than the 15th day after the date the license holder knows  
21 or has reason to know of a material change in the information  
22 reported in an application or renewal report. The report must  
23 describe the change and the anticipated impact of the change on the  
24 license holder's activities in this state.

25 (b) A license holder must file a written report with the  
26 commissioner not later than 24 hours after the license holder knows  
27 or has reason to know of:

1           (1) the filing of a petition by or against the license  
2 holder for bankruptcy or reorganization;

3           (2) the filing of a petition by or against the license  
4 holder for receivership, the commencement of any other judicial or  
5 administrative proceeding for its dissolution or reorganization,  
6 or the making of a general assignment for the benefit of the license  
7 holder's creditors;

8           (3) the institution of a proceeding to revoke or  
9 suspend the license holder's license, or to enjoin or otherwise  
10 require the license holder to cease and desist from engaging in an  
11 activity related to money transmission, by a state or country in  
12 which the license holder engages in business or is licensed;

13           (4) the felony indictment or conviction of the license  
14 holder or a principal of, person in control of, responsible  
15 individual of, or authorized delegate of the license holder for an  
16 offense identified in Section 151.202(e);

17           (5) the cancellation or other impairment of the  
18 license holder's security; or

19           (6) the inability to meet the license holder's  
20 transmission obligations under this chapter for a period of 24  
21 hours or longer.

22           Sec. 151.605. CHANGE OF CONTROL. (a) This section applies  
23 to a proposed change of control of a license holder that results in  
24 a person or group of persons acting in concert, a "proposed person  
25 in control," after consummation of the acquisition transaction,  
26 controlling the license holder or a person in control of a license  
27 holder.

1       (b) A person may not directly or indirectly acquire control  
2 of a license holder or a person in control of a license holder  
3 without the prior written approval of the commissioner, except as  
4 provided by this section.

5       (c) A license holder or proposed person in control shall:

6           (1) give the commissioner written notice of a proposed  
7 change of control at least 45 days before the date the proposed  
8 transaction is to be consummated;

9           (2) request approval of the proposed change of  
10 control; and

11           (3) submit a nonrefundable fee in an amount  
12 established by commission rule.

13       (d) A proposed person in control is subject to the same  
14 standards and qualifications that apply to a principal of an  
15 applicant for a new license under this chapter. The commissioner  
16 may require the license holder or proposed person in control to  
17 provide the same type of information, documentation, and  
18 certifications and may conduct the same type of investigation the  
19 commissioner requires and conducts in connection with a new license  
20 application.

21       (e) The commissioner shall approve a proposed change of  
22 control if the commissioner determines that the proposed person in  
23 control has the financial responsibility, financial condition,  
24 business experience, competence, character, and general fitness to  
25 warrant the belief that the business of the license holder will be  
26 conducted in compliance with this chapter, rules adopted under this  
27 chapter, and other applicable state and federal law and that the

1 change of control will not jeopardize the public interest.

2 (f) If the commissioner determines that the proposed person  
3 in control fails to meet the qualifications, standards, and  
4 requirements of this chapter, the commissioner shall inform the  
5 license holder and the proposed person in control in writing that  
6 the application is denied and state the reasons for the denial. The  
7 license holder or the proposed person in control may appeal the  
8 denial by filing a written request for a hearing with the  
9 commissioner not later than the 30th day after the date the notice  
10 is mailed. A hearing on the denial must be held not later than the  
11 45th day after the date the commissioner receives the written  
12 request unless the administrative law judge extends the period for  
13 good cause or the parties agree to a later hearing date. The  
14 hearing is considered a contested case hearing and is subject to  
15 Section 151.801.

16 (g) The following persons are exempt from the requirements  
17 of Subsection (a), but the license holder must notify the  
18 commissioner not later than the 15th day after the date the change  
19 of control becomes effective:

20 (1) a person that acts as proxy for the sole purpose of  
21 voting at a designated meeting of the security holders or holders of  
22 voting interests of a license holder or controlling person;

23 (2) a person that acquires control of a license holder  
24 by devise or descent;

25 (3) a person that acquires control as a personal  
26 representative, custodian, guardian, conservator, or trustee, or  
27 as an officer appointed by a court or by operation of law;

1           (4) a person exempted in the public interest by rule of  
2 the commission or by order of the commissioner; and

3           (5) a person that has previously complied with and  
4 received approval under this chapter or that was identified as a  
5 person in control in a prior application filed with and approved by  
6 the commissioner.

7           (h) Subsection (b) does not apply to a public offering of  
8 securities.

9           (i) Before filing an application for approval of a proposed  
10 change of control, a license holder may submit a written request  
11 asking the commissioner to determine whether a person would be  
12 considered a proposed person in control of the license holder and  
13 whether the requirements of this section apply to the proposed  
14 transaction. The request must be accompanied by a fee in an amount  
15 established by commission rule and must correctly and fully  
16 represent the facts relevant to the person and the proposed  
17 transaction. If the commissioner determines that the person would  
18 not be a person in control of the license holder for purposes of  
19 this section, the commissioner shall advise the license holder in  
20 writing that this section does not apply to the proposed person and  
21 transaction.

22           Sec. 151.606. CONFIDENTIALITY. (a) Except as otherwise  
23 provided by Subsection (b) or by rule of the commission, all  
24 financial information and all other personal information obtained  
25 by the commissioner under this chapter through application,  
26 examination, investigation, or otherwise, and any related file or  
27 record of the department, is confidential and not subject to

1 disclosure.

2 (b) The commissioner may disclose confidential information  
3 if:

4 (1) the applicant, license holder, or authorized  
5 delegate consents to the release of the information or has  
6 published the information contained in the release;

7 (2) the commissioner finds that release of the  
8 information is necessary to protect the public or purchasers or  
9 potential purchasers of money services from the license holder or  
10 authorized delegate from immediate and irreparable harm;

11 (3) the information is disclosed to an agency  
12 identified in Section 151.105(a), in which event the information  
13 remains confidential and the agency must take appropriate measures  
14 to maintain that confidentiality;

15 (4) the commissioner finds that release of the  
16 information is required for an administrative hearing; or

17 (5) the commissioner discloses the information to a  
18 person acting on behalf of or for the commissioner for regulatory or  
19 enforcement purposes, subject to an agreement that maintains the  
20 confidentiality of the information.

21 (c) This section does not prohibit the commissioner from  
22 disclosing to the public:

23 (1) a list of license holders or authorized delegates,  
24 including addresses and the names of contact individuals;

25 (2) the identity of a license holder or authorized  
26 delegate subject to an emergency or final order of the commissioner  
27 and the basis for the commissioner's action; or

1           (3) information regarding or included in a consumer  
2 complaint against a license holder or authorized delegate.

3           [Sections 151.607-151.700 reserved for expansion]

4                   SUBCHAPTER H. ENFORCEMENT

5           Sec. 151.701. INJUNCTIVE RELIEF. (a) Whenever it appears  
6 that a person has violated, or that reasonable cause exists to  
7 believe that a person is likely to violate, this chapter or a rule  
8 adopted under this chapter, the following persons may bring an  
9 action for injunctive relief to enjoin the violation or enforce  
10 compliance with the provision:

11                   (1) the commissioner, through the attorney general;  
12                   (2) the attorney general;  
13                   (3) the district attorney of Travis County; or  
14                   (4) the prosecuting attorney of the county in which  
15 the violation is alleged to have occurred.

16           (b) In addition to the authority granted to the commissioner  
17 under Subsection (a), the commissioner, through the attorney  
18 general, may bring an action for injunctive relief if the  
19 commissioner has reason to believe that a person has violated or is  
20 likely to violate an order of the commissioner issued under this  
21 chapter.

22           (c) An action for injunctive relief brought by the  
23 commissioner, the attorney general, or the district attorney of  
24 Travis County under Subsection (a), or brought by the commissioner  
25 under Subsection (b), must be brought in a district court in Travis  
26 County. An action brought by a prosecuting attorney under  
27 Subsection (a)(4) must be brought in a district court in the county

1 in which all or part of the violation is alleged to have occurred.

2 (d) On a proper showing, the court may issue a restraining  
3 order, an order freezing assets, a preliminary or permanent  
4 injunction, or a writ of mandate, or may appoint a receiver for the  
5 defendant or the defendant's assets.

6 (e) A receiver appointed by the court under Subsection (d)  
7 may, with approval of the court, exercise all of the powers of the  
8 defendant's directors, officers, partners, trustees, or persons  
9 who exercise similar powers and perform similar duties.

10 (f) An action brought under this section may include a claim  
11 for ancillary relief, including a claim by the commissioner for  
12 costs or civil penalties authorized under this chapter, or for  
13 restitution or damages on behalf of the persons injured by the act  
14 constituting the subject matter of the action, and the court has  
15 jurisdiction to award that relief.

16 Sec. 151.702. UNLICENSED PERSONS. If the commissioner has  
17 reason to believe that an unlicensed person has engaged or is likely  
18 to engage in an activity for which a license is required under this  
19 chapter, the commissioner may order the person to cease and desist  
20 from the violation until the person is issued a license under this  
21 chapter. The commissioner's order is subject to Section 151.709,  
22 unless the order is issued as an emergency order. The commissioner  
23 may issue an emergency cease and desist order in accordance with  
24 Section 151.710 if the commissioner finds that the person's  
25 violation or likely violation threatens immediate and irreparable  
26 harm to the public.

27 Sec. 151.703. SUSPENSION AND REVOCATION OF LICENSE. (a)



1 The commissioner must revoke a license if the commissioner finds  
2 that:

3 (1) the net worth of the license holder is less than  
4 the amount required under this chapter; or

5 (2) the license holder does not provide the security  
6 required under this chapter.

7 (b) The commissioner may suspend or revoke a license or  
8 order a license holder to revoke the designation of an authorized  
9 delegate if the commissioner has reason to believe that:

10 (1) the license holder has violated this chapter, a  
11 rule adopted or order issued under this chapter, a written  
12 agreement entered into with the department or commissioner, or any  
13 other state or federal law applicable to the license holder's money  
14 services business;

15 (2) the license holder has refused to permit or has not  
16 cooperated with an examination or investigation authorized by this  
17 chapter;

18 (3) the license holder has engaged in fraud, knowing  
19 misrepresentation, deceit, or gross negligence in connection with  
20 the operation of the license holder's money services business or  
21 any transaction subject to this chapter;

22 (4) an authorized delegate of the license holder has  
23 knowingly violated this chapter, a rule adopted or order issued  
24 under this chapter, or a state or federal anti-money-laundering or  
25 terrorist funding law, and the license holder knows or should have  
26 known of the violation and has failed to make a reasonable effort to  
27 prevent or correct the violation;

1           (5) the competence, experience, character, or general  
2 fitness of the license holder or an authorized delegate of the  
3 license holder, or a principal of, person in control of, or  
4 responsible person of a license holder or authorized delegate,  
5 indicates that it is not in the public interest to permit the  
6 license holder or authorized delegate to provide money services;

7           (6) the license holder has engaged in an unsafe or  
8 unsound act or practice or has conducted business in an unsafe or  
9 unsound manner;

10           (7) the license holder has suspended payment of the  
11 license holder's obligations, made a general assignment for the  
12 benefit of the license holder's creditors, or admitted in writing  
13 the license holder's inability to pay debts of the license holder as  
14 they become due;

15           (8) the license holder has failed to terminate the  
16 authority of an authorized delegate after the commissioner has  
17 issued and served on the license holder a final order finding that  
18 the authorized delegate has violated this chapter;

19           (9) a fact or condition exists that, if it had been  
20 known at the time the license holder applied for the license, would  
21 have been grounds for denying the application;

22           (10) the license holder has engaged in false,  
23 misleading, or deceptive advertising;

24           (11) the license holder has failed to pay a judgment  
25 entered in favor of a claimant or creditor in an action arising out  
26 of the license holder's activities under this chapter not later  
27 than the 30th day after the date the judgment becomes final or not

1 later than the 30th day after the date the stay of execution expires  
2 or is terminated, as applicable;

3 (12) the license holder has knowingly made a material  
4 misstatement or has suppressed or withheld material information on  
5 an application, request for approval, report, or other document  
6 required to be filed with the department under this chapter; or

7 (13) the license holder has committed a breach of  
8 trust or of a fiduciary duty.

9 (c) In determining whether a license holder has engaged in  
10 an unsafe or unsound act or practice or has conducted business in an  
11 unsafe or unsound manner, the commissioner may consider factors  
12 that include:

13 (1) the size and condition of the license holder's  
14 provision of money services;

15 (2) the magnitude of the loss or potential loss;

16 (3) the gravity of the violation of this chapter or  
17 rule adopted or order issued under this chapter;

18 (4) any action taken against the license holder by  
19 this state, another state, or the federal government; and

20 (5) the previous conduct of the license holder.

21 (d) The commissioner's order suspending or revoking a  
22 license or directing a license holder to revoke the designation of  
23 an authorized delegate is subject to Section 151.709, unless the  
24 order is issued as an emergency order. The commissioner may issue  
25 an emergency order suspending a license or directing a license  
26 holder to revoke the designation of an authorized delegate in  
27 accordance with Section 151.710 if the commissioner finds that the

1 factors identified in Section 151.710(b) exist.

2 Sec. 151.704. SUSPENSION AND REVOCATION OF AUTHORIZED  
3 DELEGATE DESIGNATION. (a) The commissioner may suspend or revoke  
4 the designation of an authorized delegate if the commissioner has  
5 reason to believe that:

6 (1) the authorized delegate has violated this chapter,  
7 a rule adopted or order issued under this chapter, a written  
8 agreement entered into with the commissioner or the department, or  
9 any other state or federal law applicable to a money services  
10 business;

11 (2) the authorized delegate has refused to permit or  
12 has not cooperated with an examination or investigation under this  
13 chapter;

14 (3) the authorized delegate has engaged in fraud,  
15 knowing misrepresentation, deceit, gross negligence, or an unfair  
16 or deceptive act or practice in connection with the operation of the  
17 delegate's business on behalf of the license holder or any  
18 transaction subject to this chapter;

19 (4) the competence, experience, character, or general  
20 fitness of the authorized delegate, or a principal of, person in  
21 control of, or responsible person of the authorized delegate,  
22 indicates that it is not in the public interest to permit the  
23 authorized delegate to provide money services;

24 (5) the authorized delegate has engaged in an unsafe  
25 or unsound act or practice or conducted business in an unsafe and  
26 unsound manner;

27 (6) the authorized delegate, or a principal or

1 responsible person of the authorized delegate, is listed on the  
2 specifically designated nationals and blocked persons list  
3 prepared by the United States Department of the Treasury as a  
4 potential threat to commit terrorist acts or to fund terrorist  
5 acts; or

6 (7) the authorized delegate, or a principal or  
7 responsible person of the authorized delegate, has been convicted  
8 of a state or federal anti-money-laundering or terrorist funding  
9 law.

10 (b) In determining whether an authorized delegate has  
11 engaged in an unsafe or unsound act or practice or conducted  
12 business in an unsafe or unsound manner, the commissioner may  
13 consider factors that include:

14 (1) the size and condition of the authorized  
15 delegate's provision of money services;

16 (2) the magnitude of the loss or potential loss;

17 (3) the gravity of the violation of this chapter or  
18 rule adopted or order issued under this chapter;

19 (4) any action taken against the authorized delegate  
20 by this state, another state, or the federal government; and

21 (5) the previous conduct of the authorized delegate.

22 (c) The commissioner's order suspending or revoking the  
23 designation of an authorized delegate is subject to Section  
24 151.709, unless the order is issued as an emergency order. The  
25 commissioner may issue an emergency order suspending the  
26 designation of an authorized delegate in accordance with Section  
27 151.710 if the commissioner finds that the factors identified in

1 Section 151.710(b) exist.

2 Sec. 151.705. CEASE AND DESIST ORDERS. (a) The  
3 commissioner may issue an order to cease and desist if the  
4 commissioner finds that:

5 (1) an action, violation, or condition listed in  
6 Section 151.703 or 151.704 exists with respect to a license holder  
7 or authorized delegate; and

8 (2) a cease and desist order is necessary to protect  
9 the interests of the license holder, the purchasers of the license  
10 holder's money services, or the public.

11 (b) A cease and desist order may require a license holder or  
12 authorized delegate to cease and desist from the action or  
13 violation or to take affirmative action to correct any condition  
14 resulting from or contributing to the action or violation, and the  
15 requirements of the order may apply to a principal or responsible  
16 person of the license holder or authorized delegate.

17 (c) The cease and desist order is subject to Section  
18 151.709, unless the order is issued as an emergency order. The  
19 commissioner may issue an emergency cease and desist order in  
20 accordance with Section 151.710 if the commissioner finds that the  
21 factors identified in Section 151.710(b) exist.

22 Sec. 151.706. CONSENT ORDERS. (a) The commissioner may  
23 enter into a consent order at any time with a person to resolve a  
24 matter arising under this chapter or a rule adopted or order issued  
25 under this chapter.

26 (b) A consent order must be signed by the person to whom the  
27 order is issued or by the person's authorized representative and

1 must indicate agreement with the terms contained in the order.  
2 However, a consent order may provide that the order does not  
3 constitute an admission by a person that this chapter or a rule  
4 adopted or order issued under this chapter has been violated.

5 (c) A consent order is a final order and may not be appealed.

6 Sec. 151.707. ADMINISTRATIVE PENALTY. (a) After notice  
7 and hearing, the commissioner may assess an administrative penalty  
8 against a person that:

9 (1) has violated this chapter or a rule adopted or  
10 order issued under this chapter and has failed to correct the  
11 violation not later than the 30th day after the date the department  
12 sends written notice of the violation to the person;

13 (2) if the person is a license holder, has engaged in  
14 conduct specified in Section 151.703;

15 (3) has engaged in a pattern of violations; or

16 (4) has demonstrated wilful disregard for the  
17 requirements of this chapter, the rules adopted under this chapter,  
18 or an order issued under this chapter.

19 (b) A violation corrected after a person receives written  
20 notice from the department of the violation may be considered for  
21 purposes of determining whether a person has engaged in a pattern of  
22 violations under Subsection (a)(3) or demonstrated wilful  
23 disregard under Subsection (a)(4).

24 (c) The amount of the penalty may not exceed \$5,000 for each  
25 violation or, in the case of a continuing violation, \$5,000 for each  
26 day that the violation continues. Each transaction in violation of  
27 this chapter and each day that a violation continues is a separate

1 violation.

2 (d) In determining the amount of the penalty, the  
3 commissioner shall consider factors that include the seriousness of  
4 the violation, the person's compliance history, and the person's  
5 good faith in attempting to comply with this chapter, provided that  
6 if the person is found to have demonstrated wilful disregard under  
7 Subsection (a)(4), the trier of fact shall recommend that the  
8 commissioner impose the maximum administrative penalty permitted  
9 under Subsection (c).

10 (e) A hearing to assess an administrative penalty is  
11 considered a contested case hearing and is subject to Section  
12 151.801.

13 (f) An order imposing an administrative penalty after  
14 notice and hearing becomes effective and is final for purposes of  
15 collection and appeal immediately on issuance.

16 (g) The commissioner may collect an administrative penalty  
17 assessed under this section:

18 (1) in the same manner that a money judgment is  
19 enforced in court; or

20 (2) if the penalty is imposed against a license holder  
21 or a license holder's authorized delegate, from the proceeds of the  
22 license holder's security in accordance with Section 151.308(e).

23 Sec. 151.708. CRIMINAL PENALTY. (a) A person commits an  
24 offense if the person:

25 (1) intentionally makes a false statement,  
26 misrepresentation, or certification in a record or application  
27 filed with the department or required to be maintained under this



1 chapter or a rule adopted or order issued under this chapter, or  
2 intentionally makes a false entry or omits a material entry in the  
3 record or application; or

4 (2) knowingly engages in an activity for which a  
5 license is required under Subchapter D or F without being licensed  
6 under this chapter.

7 (b) An offense under this section is a felony of the third  
8 degree.

9 (c) If the commissioner has reason to believe that a person  
10 has committed an offense under this section or any other state or  
11 federal law, the commissioner may file a criminal referral with the  
12 district attorney of Travis County or an appropriate prosecuting  
13 attorney of the county in which the offense is alleged to have been  
14 committed.

15 (d) Nothing in this section limits the power of the state to  
16 punish a person for an act that constitutes an offense under this or  
17 any other law.

18 Sec. 151.709. NOTICE, HEARING, AND OTHER PROCEDURES FOR  
19 NONEMERGENCY ORDERS. (a) This section applies to an order issued  
20 by the commissioner under this subchapter that is not an emergency  
21 order.

22 (b) An order to which this section applies becomes effective  
23 only after notice and an opportunity for hearing. The order must:

24 (1) state the grounds on which the order is based;  
25 (2) to the extent applicable, state the action or  
26 violation from which the person subject to the order must cease and  
27 desist or the affirmative action the person must take to correct a

1 condition resulting from the violation or that is otherwise  
2 appropriate;

3 (3) be delivered by personal delivery or sent by  
4 certified mail, return receipt requested, to the person against  
5 whom the order is directed at the person's last known address;

6 (4) state the effective date of the order, which may  
7 not be before the 21st day after the date the order is delivered or  
8 mailed; and

9 (5) include a notice that a person may file a written  
10 request for a hearing on the order with the commissioner not later  
11 than the 20th day after the date the order is delivered or mailed.

12 (c) Unless the commissioner receives a written request for  
13 hearing from the person against whom the order is directed not later  
14 than the 20th day after the date the order is delivered or mailed,  
15 the order takes effect as stated in the order and is final against  
16 and nonappealable by that person from that date.

17 (d) A hearing on the order must be held not later than the  
18 45th day after the date the commissioner receives the written  
19 request for the hearing unless the administrative law judge extends  
20 the period for good cause or the parties agree to a later hearing  
21 date.

22 (e) An order that has been affirmed or modified after a  
23 hearing becomes effective and is final for purposes of enforcement  
24 and appeal immediately on issuance. The order may be appealed to  
25 the district court of Travis County as provided by Section  
26 151.801(b).

27 Sec. 151.710. REQUIREMENTS AND NOTICE AND HEARING

1 PROCEDURES FOR EMERGENCY ORDERS. (a) This section applies to an  
2 emergency order issued by the commissioner under this subchapter.

3 (b) The commissioner may issue an emergency order, without  
4 prior notice and an opportunity for hearing, if the commissioner  
5 finds that:

6 (1) the action, violation, or condition that is the  
7 basis for the order:

8 (A) has caused or is likely to cause the  
9 insolvency of the license holder;

10 (B) has caused or is likely to cause the  
11 substantial dissipation of the license holder's assets or earnings;

12 (C) has seriously weakened or is likely to  
13 seriously weaken the condition of the license holder; or

14 (D) has seriously prejudiced or is likely to  
15 seriously prejudice the interests of the license holder, a  
16 purchaser of the license holder's money services, or the public;  
17 and

18 (2) immediate action is necessary to protect the  
19 interests of the license holder, a purchaser of the license  
20 holder's money services, or the public.

21 (c) In connection with and as directed by an emergency  
22 order, the commissioner may seize the records and assets of a  
23 license holder or authorized delegate that relate to the license  
24 holder's money services business.

25 (d) An emergency order must:

26 (1) state the grounds on which the order is based;

27 (2) advise the person against whom the order is

1 directed that the order takes effect immediately, and, to the  
2 extent applicable, require the person to immediately cease and  
3 desist from the conduct or violation that is the subject of the  
4 order or to take the affirmative action stated in the order as  
5 necessary to correct a condition resulting from the conduct or  
6 violation or as otherwise appropriate;

7 (3) be delivered by personal delivery or sent by  
8 certified mail, return receipt requested, to the person against  
9 whom the order is directed at the person's last known address; and

10 (4) include a notice that a person may request a  
11 hearing on the order by filing a written request for hearing with  
12 the commissioner not later than the 15th day after the date the  
13 order is delivered or mailed.

14 (e) An emergency order takes effect as soon as the person  
15 against whom the order is directed has actual or constructive  
16 knowledge of the issuance of the order.

17 (f) A license holder or authorized delegate against whom an  
18 emergency order is directed must submit a written certification to  
19 the commissioner, signed by the license holder or authorized  
20 delegate, and their principals and responsible individuals, as  
21 applicable, and each person named in the order, stating that each  
22 person has received a copy of and has read and understands the  
23 order.

24 (g) Unless the commissioner receives a written request for a  
25 hearing from a person against whom an emergency order is directed  
26 not later than the 15th day after the date the order is delivered or  
27 mailed, the order is final and nonappealable as to that person on

1 the 16th day after the date the order is delivered or mailed.

2 (h) A request for a hearing does not stay an emergency  
3 order.

4 (i) A hearing on an emergency order takes precedence over  
5 any other matter pending before the commissioner, and must be held  
6 not later than the 10th day after the date the commissioner receives  
7 the written request for hearing unless the administrative law judge  
8 extends the period for good cause or the parties agree to a later  
9 hearing date.

10 (j) An emergency order that has been affirmed or modified  
11 after a hearing is final for purposes of enforcement and appeal.  
12 The order may be appealed to the district court of Travis County as  
13 provided in Section 151.801(b).

14 [Sections 151.711-151.800 reserved for expansion]

15 SUBCHAPTER I. ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

16 Sec. 151.801. ADMINISTRATIVE PROCEDURES. (a) All  
17 administrative proceedings under this chapter must be conducted in  
18 accordance with Chapter 2001, Government Code, and Title 7, Chapter  
19 9, Texas Administrative Code.

20 (b) A person affected by a final order of the commissioner  
21 issued under this chapter after a hearing may appeal the order by  
22 filing a petition for judicial review in a district court of Travis  
23 County. A petition for judicial review filed in the district court  
24 under this subsection does not stay or vacate the appealed order  
25 unless the court, after notice and hearing, specifically stays or  
26 vacates the order.

27 SECTION 2. (a) A license issued under Chapter 152, Finance

1 Code, or Chapter 153, Finance Code, that is in effect on September  
2 1, 2005, remains in force as a license under Chapter 152, Finance  
3 Code, or Chapter 153, Finance Code, until August 15, 2006. The  
4 license expires on August 15, 2006, unless the license holder  
5 renews the license in accordance with this Act. Except as provided  
6 by this section, a license holder that seeks to renew its license  
7 must satisfy the net worth, security, permissible investment, and  
8 other substantive requirements for licensure established in  
9 Chapter 151, Finance Code, as added by this Act.

10 (b) A person licensed as of September 1, 2005, to engage in  
11 the business of currency transmission or currency transportation  
12 under Chapter 153, Finance Code, has until August 15, 2011, to  
13 satisfy the net worth and permissible investment requirements  
14 established in Chapter 151, Finance Code, as added by this Act. The  
15 Banking Commissioner of Texas may extend the period beyond that  
16 date on a year-by-year basis for good cause shown.

17 (c) A person licensed as of September 1, 2005, to engage in  
18 the business of currency transmission or currency transportation  
19 under Chapter 153, Finance Code, has until August 15, 2007, to  
20 satisfy the security requirements established in Chapter 151,  
21 Finance Code, as added by this Act.

22 (d) A contract between a license holder and an authorized  
23 delegate that is in effect on September 1, 2005, remains in effect  
24 until the earlier of the date the contract is renewed or December  
25 31, 2006. A new or renewal contract entered into between a license  
26 holder and an authorized delegate after the effective date of this  
27 Act must satisfy the contract requirements established in Chapter

1 151, Finance Code, as added by this Act.

2 (e) The Finance Commission of Texas may adopt rules to  
3 further provide for the orderly transition to licensing and  
4 regulation under this Act.

5 SECTION 3. Chapters 152 and 153, Finance Code, are  
6 repealed.

7 SECTION 4. This Act takes effect September 1, 2005.

H.B. No. 2218

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2218 was passed by the House on May 11, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2218 on May 26, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 2218 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor