

By: McCall

H.B. No. 2218

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of money services businesses in Texas and penalties.

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

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

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, whether 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) "Commission" means the Finance Commission of Texas.

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

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

5           (5) "Currency exchange license" means a license issued  
6 under Subchapter F.

7           (6) "Department" means the Texas Department of  
8 Banking.

9           (7) "Executive officer" means president, chair of the  
10 executive committee, treasurer or chief financial officer, or other  
11 individual who performs similar functions.

12           (8) "License holder" means a person that holds a money  
13 transmission license or a currency exchange license issued under  
14 this chapter.

15           (9) "Location" means a place at which activity  
16 regulated by this chapter occurs.

17           (10) "Material litigation" means any litigation that,  
18 according to generally accepted accounting principles, is deemed  
19 significant to an applicant's or license holder's financial health  
20 and would be required to be referenced in that entity's audited  
21 financial statements, report to shareholders, or similar  
22 documents.

23           (11) "Money services" means money transmission as  
24 defined in Section 151.301 or currency exchange as defined in  
25 Section 151.501.

26           (12) "Money transmission license" means a license  
27 issued under Subchapter D.

1           (13) "Person" means an individual or legal entity.

2           (14) "Principal" means:

3                   (A) with respect to a sole proprietorship, an  
4 owner; or

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

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

11           (16) "Responsible individual" means an individual who  
12 has direct control over or significant management policy and  
13 decision-making authority with respect to a license holder's  
14 ongoing, daily money services operations in this state.

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

19           Sec. 151.003. EXCLUSIONS. (a) The following persons are  
20 not required to be licensed under this chapter:

21                   (1) the United States or a department, agency or  
22 instrumentality of the United States, including the United States  
23 Post Office or a contractor acting on behalf of the United States  
24 Post Office;

25                   (2) a state or an agency, political subdivision or  
26 other instrumentality of a state;

27                   (3) a federally insured financial institution, as that

1 term is defined by Section 201.101, Finance Code, that is organized  
2 under the laws of this state, another state, or the United States;

3 (4) a foreign bank branch or agency in the United  
4 States established under the federal International Banking Act of  
5 1978;

6 (5) a person acting as an agent for an entity excluded  
7 under paragraph (3) or (4), to the extent of its actions in that  
8 capacity, provided that:

9 (A) the entity is liable for satisfying the money  
10 services obligation owed the purchaser upon the person's receipt of  
11 the purchaser's money; and

12 (B) the entity and the person enter into a  
13 written contract that appoints the person as the entity's agent and  
14 the person acts only within the scope of authority conferred by the  
15 contract;

16 (6) a person that, on behalf of the United States or a  
17 department, agency or instrumentality of the United States, or a  
18 state or county, city or any other governmental agency or political  
19 subdivision of a state, provides electronic funds transfer services  
20 of governmental benefits for a federal, state, county or local  
21 governmental agency;

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

1 satisfying the obligation owed the purchaser;

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

6 (9) a person engaged in the business of currency  
7 transportation who is both a registered motor carrier under Chapter  
8 643, Transportation Code, and a licensed armored car company or  
9 courier company under Chapter 1702, Occupations Code, provided that  
10 the person does not engage in the money transmission or currency  
11 exchange business without a license issued under this chapter; and

12 (10) any other person, transaction, or class of  
13 persons or transactions exempted by rule or any other person or  
14 transaction exempted by the commissioner's order upon the finding  
15 that the licensing of the person is not necessary to achieve the  
16 objectives of this chapter.

17 Sec. 151.004. STATUTORY REFERENCES. In this chapter,  
18 unless otherwise expressly provided, a reference to a statute or  
19 rule includes the statute or rule, as amended, whether before or  
20 after the effective date of this chapter, as well as any new statute  
21 or rule substituted for the statute or rule after the effective date  
22 of this chapter.

23 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

24 Sec. 151.101. ADMINISTRATION. The Department shall  
25 administer this chapter.

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

1 appropriate to:

2 (1) implement and clarify this chapter;

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

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

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

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

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

20 Sec. 151.103. COMMISSIONER'S GENERAL AUTHORITY. (a) The  
21 several powers granted the commissioner under the provisions of  
22 this chapter are in addition to, and not in limitation of, each  
23 other. The fact that the commissioner possesses, or has exercised,  
24 a power under any provision of this chapter shall not preclude the  
25 commissioner from exercising a power under any other provision of  
26 this chapter.

27 (b) The several powers granted to the commissioner under

this chapter are in addition to, and not in limitation of, the commissioners powers under other provisions of law. The fact that the commissioner possesses, or has exercised, a power under any other provision of law shall not preclude the commissioner from exercising any power under this chapter; nor shall the fact that the commissioner possesses, or has exercised, a power under any provision of this chapter preclude the commissioner from exercising a power under any other provision of 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 the provisions and achieve the purposes of this chapter.

Sec. 151.104. INVESTIGATIONS. (a) The commissioner may conduct investigations within 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, renewal or 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 likely to violate this chapter or a rule adopted or order issued under this chapter;

(3) determine whether a license or authorized delegate designation should be revoked or suspended or to otherwise aid in the enforcement of this chapter or a rule adopted or order issued under this chapter; and

1           (4) aid in the adoption of rules or issuance of orders  
2 under this chapter.

3           (b) For purposes of an investigation, examination or other  
4 proceeding under this chapter, the commissioner may administer or  
5 cause to be administered oaths and affirmations, subpoena  
6 witnesses, compel their attendance, take evidence and require the  
7 production of any documents that the commissioner determines to be  
8 relevant to the inquiry.

9           (c) In the event a person refuses to obey a subpoena, a  
10 district court of Travis County, upon application by the  
11 commissioner, may issue an order requiring the person to appear  
12 before the commissioner and produce documents or give evidence  
13 regarding the matter under investigation.

14           (d) The commissioner may employ a third party or ask the  
15 Texas Attorney General, the Texas Department of Public Safety, or  
16 any other state, federal or local law enforcement agency to assist  
17 in enforcing this chapter.

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

21           Sec. 151.105. REGULATORY COOPERATION. (a) To efficiently  
22 and effectively administer and enforce this chapter and minimize  
23 regulatory burden, the commissioner may cooperate, coordinate and  
24 share information with another state, federal or foreign  
25 governmental agency that:

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



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

5           (b) The commissioner, with respect to an agency described  
6 and for the purposes set out in subsection (a), may:

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

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

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

13           (4) accept a report of examination or investigation  
14 by, or a report submitted to, the agency, in which event the  
15 accepted report is an official report of the commissioner for all  
16 purposes;

17           (5) engage the services of the agency to assist the  
18 commissioner in performing or discharging a duty or responsibility  
19 imposed by this chapter or other law and pay a reasonable fee for  
20 the services;

21           (6) share supervisory or examination fees assessed  
22 against a license holder or authorized delegate under this chapter  
23 with the agency and receive a portion of supervisory or examination  
24 fees assessed by the agency against a license holder or authorized  
25 delegate; and

26           (7) take such other action as the commissioner  
27 considers reasonably necessary or appropriate to carry out the

1 provisions of and achieve the purposes of this chapter.

2 (c) The commissioner may not waive, and nothing in this  
3 section shall constitute a waiver of, the commissioner's authority  
4 to conduct an examination or investigation or otherwise take  
5 independent action authorized by this chapter or a rule adopted or  
6 order issued under this chapter to enforce compliance with  
7 applicable state or federal law.

8 (d) A joint examination or investigation, or acceptance of  
9 an examination or investigation report, does not waive an  
10 examination assessment provided for in this chapter.

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

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

20 SUBCHAPTER C. GENERAL QUALIFICATIONS AND PROVISIONS APPLICABLE TO  
21 MONEY SERVICES LICENSES

22 Sec. 151.201. SCOPE. This subchapter sets out the general  
23 qualifications and provisions that apply to a money services  
24 license, whether a money transmission license or a currency  
25 exchange license. Subchapters D and E set out the additional  
26 qualifications and provisions that apply specifically to a money  
27 transmission license. Subchapter F sets out the additional

1 qualifications and provisions that apply specifically to a currency  
2 exchange license.

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

7 (1) the financial responsibility and condition,  
8 financial and business experience, competence, character and  
9 general fitness of the applicant justify the confidence of the  
10 public and warrant the belief that the applicant will conduct  
11 business in compliance with this chapter and the rules adopted  
12 under this chapter and other applicable state and federal law, and  
13 that issuance of the license is in the public interest;

14 (2) neither the applicant, a principal of the  
15 applicant, nor a person in control of the applicant owes the  
16 department a delinquent fee, assessment, administrative penalty or  
17 other amount imposed under this chapter or a rule adopted or order  
18 issued under this chapter;

19 (3) neither the applicant nor, if the applicant does  
20 business as a partnership, any partner that would generally be  
21 liable for the obligations of the partnership, owes a delinquent  
22 federal tax;

23 (4) the applicant, if a corporation, is in good  
24 standing and statutory compliance in the state or country of  
25 incorporation, is authorized to conduct business in Texas, and does  
26 not owe any delinquent franchise or other taxes to the State of  
27 Texas;

1           (5) the applicant, if not a corporation, is properly  
2 registered under the laws of Texas or another state or country and,  
3 if required, is authorized to do business in Texas; and

4           (6) neither the applicant, a principal of the  
5 applicant, nor a principal of a person in control of the applicant  
6 is listed on the specifically designated nationals and blocked  
7 persons list prepared by the United States Department of Treasury  
8 or designated successor agency as a potential threat to commit  
9 terrorist acts or to fund terrorist acts.

10          (b) In determining whether an applicant has demonstrated  
11 satisfaction of the qualifications identified in subsection  
12 (a)(1), the commissioner shall consider the financial  
13 responsibility and condition, financial and business experience,  
14 competence, character and general fitness of each principal, person  
15 in control, principal of a person in control, and proposed  
16 responsible individual of the applicant and may deny approval of  
17 the application on the basis that the applicant has failed to  
18 demonstrate satisfaction of the requisite qualifications with  
19 respect to one or more of such persons.

20          (c) The commissioner shall not issue a license to an  
21 applicant if the applicant or one of the following persons has been  
22 convicted within the preceding ten years of a criminal offense  
23 identified in subsection (e):

24               (1) if the applicant is an individual, the spouse or  
25 proposed responsible individual(s) of the applicant;

26               (2) if the applicant is an entity that is directly or  
27 indirectly wholly owned by one individual, the spouse of the

1 individual; or

2 (3) if the applicant is other than an individual, a  
3 principal, person in control, principal of a person in control, or  
4 proposed responsible individual(s) of the applicant.

5 (d) The commissioner, upon a finding that the conviction  
6 does not reflect adversely upon the present likelihood that the  
7 applicant will conduct business in compliance with this chapter,  
8 rules adopted under this chapter, and other applicable state and  
9 federal law, may waive a disqualification under subsection (c)  
10 based upon the conviction of a spouse or a corporate applicant or  
11 corporate person in control of an applicant.

12 (e) For purposes of subsection (c), a disqualifying  
13 conviction is a conviction for a felony criminal offense:

14 (1) under state or federal law that involves or  
15 relates to:

16 (A) deception, dishonesty, or defalcation;

17 (B) money transmission or other money services,  
18 including a reporting, recordkeeping or registration requirement  
19 of the Bank Secrecy Act, the U.S.A. Patriot Act, or Chapter 271,  
20 Finance Code;

21 (C) money laundering, structuring or a related  
22 financial crime;

23 (D) drug trafficking; or

24 (E) terrorist funding; and

25 (2) under similar laws of a foreign country unless the  
26 applicant demonstrates to the satisfaction of the commissioner that  
27 the conviction was based upon extenuating circumstances unrelated

1 to the person's reputation for honesty and obedience to law.

2 (f) For purposes of subsection (c), a person is considered  
3 convicted of an offense if the person has been found guilty or  
4 pleaded guilty or nolo contendere to the charge or has been placed  
5 on probation or deferred adjudication without regard to whether a  
6 judgment of conviction has been entered by the court.

7 Sec. 151.203. APPLICATION FOR LICENSE. (a) An application  
8 for a license under this chapter must be under oath and in the form  
9 and medium required by the commissioner. The application must  
10 state or contain:

11 (1) the legal name and residential and business  
12 address of the applicant and each principal of the applicant;

13 (2) the taxpayer identification number, social  
14 security number, driver's license number or other identifying  
15 information the commissioner requires of the applicant and each  
16 principal of the applicant; and

17 (3) such other information and documentation as the  
18 commissioner reasonably requires to determine whether the  
19 applicant qualifies for and should be issued the license for which  
20 application is made.

21 (b) The commissioner, at the time the application is  
22 submitted or in connection with an investigation of the application  
23 under Section 151.204, may require the applicant, the spouse of the  
24 applicant, a principal, individual who is a person in control, or  
25 proposed responsible individual of the applicant, or any other  
26 individual associated with the applicant and the proposed licensed  
27 activities, to provide the department a complete set of

1 fingerprints for purposes of a criminal background investigation.

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

5 (1) is familiar with and agrees to fully comply with  
6 all applicable state and federal statutes and regulations  
7 pertaining to the applicant's proposed money services business  
8 including this chapter, relevant portions of the Bank Secrecy Act,  
9 the U.S.A. Patriot Act, and Chapter 271, Finance Code;

10 (2) has not within the prior three years knowingly  
11 failed to file or evaded the obligation to file a report, including  
12 a currency transaction or suspicious activity report required by  
13 the Bank Secrecy Act, the U.S.A. Patriot Act or Chapter 271, Finance  
14 Code; and

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

18 (d) The commissioner may waive an application requirement  
19 or permit the submission of substituted information in lieu of the  
20 information generally required in an application, either with  
21 respect to a specific applicant or a category of applicants, if the  
22 commissioner determines that the waiver or substitution is  
23 consistent with achievement of the purposes of this chapter.

24 Sec. 151.204. PROCESSING AND INVESTIGATION OF APPLICATION.

25 (a) An application for a license under this chapter shall be  
26 processed and acted upon according to the time periods established  
27 by rule.

1        (b) Upon receipt of an application that meets the  
2 requirements of Section 151.203 and Section 151.304 or Section  
3 151.504, as applicable, the commissioner shall investigate the  
4 applicant to determine whether the prescribed qualifications have  
5 been met. The commissioner may:

6            (1) conduct an on-site investigation of the applicant;  
7            (2) employ a third party screening service to assist  
8 with the investigation;

9            (3) to the extent the commissioner considers  
10 reasonably necessary to evaluate the application and the  
11 applicant's qualifications, investigate the financial  
12 responsibility and condition, financial and business experience,  
13 character and general fitness of each principal, person in control,  
14 principal of a person in control, and proposed responsible  
15 individual of the applicant and any other person that is or will be  
16 associated with the applicant's licensed activities in this state;  
17 and

18            (4) require such additional information and take such  
19 other action as the commissioner considers reasonably necessary.

20        (c) The commissioner may collect from the applicant the  
21 reasonable expenses of an on-site examination or third-party  
22 investigation. Additionally, depending upon the nature and extent  
23 of the investigation required in connection with a particular  
24 application, the commissioner may require an applicant to pay a  
25 non-refundable investigation fee in an amount established by rule.

26        (d) The commissioner may suspend consideration of an  
27 application for a license if the applicant or a principal, person in



1 control, or proposed responsible individual of the applicant is the  
2 subject of a pending state or federal criminal prosecution, state  
3 or federal government enforcement action, or state or federal asset  
4 forfeiture proceeding until the conclusion of such criminal  
5 prosecution, enforcement action, or forfeiture proceeding.

6 Sec. 151.205. ISSUANCE OF LICENSE. (a) The commissioner  
7 shall issue a license if the commissioner, with respect to the  
8 license for which application is made, finds that:

9 (1) the applicant meets the prescribed qualifications  
10 and it is reasonable to believe that the applicant's business will  
11 be conducted fairly and lawfully, according to applicable state and  
12 federal law, and in a manner commanding the public's trust and  
13 confidence, and that issuance of the license is in the public  
14 interest;

15 (2) the documentation and forms submitted by and  
16 required of the applicant are acceptable; and

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

19 (b) If the commissioner finds that the applicant for any  
20 reason fails to possess the qualifications or satisfy the  
21 requirements for the license for which application is made, the  
22 commissioner shall inform the applicant in writing that the  
23 application is denied and state the reasons for the denial. The  
24 applicant may appeal the denial by filing a written request for a  
25 hearing with the commissioner not later than the 30th day after the  
26 date the notice is mailed. A hearing on the denial must be held not  
27 later than the 45th day after the date the commissioner receives the

1 written request unless the administrative law judge extends the  
2 period for good cause or the parties agree to a later hearing. The  
3 hearing is considered a contested case hearing and is subject to  
4 Section 151.801.

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

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

12 (b) As a condition of renewal, a license holder must  
13 continue to possess the qualifications and satisfy the requirements  
14 that apply to an applicant for a new money transmission license or  
15 currency exchange license, as applicable. Additionally, not later  
16 than July 1 of each year, a license holder must:

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

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

22 (A) if the license is a money transmission  
23 license issued under Subchapter D, an audited unconsolidated  
24 financial statement dated as of the last day of the license holder's  
25 fiscal year that ended in the immediately preceding calendar year;  
26 or

27 (B) if the license is a currency exchange license

1 issued under Subsection F, a financial statement, audited or  
2 unaudited, dated as of the last day of the license holder's fiscal  
3 year that ended in the immediately preceding calendar year; and

4 (C) such other information, documentation and  
5 certifications as the commissioner reasonably requires to  
6 determine the security, net worth, permissible investments, and  
7 other requirements the license holder must satisfy and whether the  
8 license holder continues to meet the qualifications and  
9 requirements for licensure.

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

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

15 (2) the license holder must pay a late fee, in an  
16 amount established by rule and that is not subject to appeal, for  
17 each business day after July 1 that the commissioner does not  
18 receive the complete renewal report and renewal fee.

19 (d) If the license holder fails to submit the complete  
20 renewal report and pay the renewal fee and any late fee due, the  
21 license expires effective 5:00 p.m. central standard time on August  
22 15, and the license holder must cease and desist from engaging in  
23 the business of money transmission or currency exchange, as  
24 applicable, as of that time. The expiration of a license is not  
25 subject to appeal.

26 (e) Upon the timely receipt of a license holder's complete  
27 renewal report, renewal fee, and any late fee due, the department

1 shall review the report and, if necessary, investigate the  
2 business and records of the license holder. Upon completion of the  
3 review and investigation, if any, the commissioner may:

4 (1) renew the license;

5 (2) impose such conditions on the renewal of the  
6 license as the commissioner reasonably considers reasonably  
7 necessary or appropriate; or

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

10 (f) Upon written application and for good cause, the  
11 commissioner may extend the time for filing the fee and report  
12 required under this section.

13 (g) The holder or principal or person in control of the  
14 holder of an expired license, or the holder or principal or person  
15 in control of the holder of a license surrendered under Section  
16 151.208, that wishes to conduct activities for which a license is  
17 required under this chapter must file a new license application and  
18 satisfy all requirements for licensure that apply at the time the  
19 new application is filed.

20 Sec. 151.208. SURRENDER OF LICENSE. (a) A license holder  
21 may surrender the license holder's license by delivering the  
22 original license to the commissioner along with a written notice of  
23 surrender that includes the location at which the license holder's  
24 records will be stored and the name, address, telephone number and  
25 other contact information for an individual who is authorized to  
26 provide access to the records.

27 (b) A license holder shall surrender the license holder's

1 license if the license holder becomes ineligible for a license  
2 under Section 151.202(c).

3 (c) The surrender of a license does not reduce or eliminate  
4 a license holder's civil or criminal liability arising from any  
5 acts or omissions prior to the surrender of the license, including  
6 any administrative action undertaken by the commissioner to deny  
7 the renewal of, revoke, or suspend a license, assess an  
8 administrative penalty, order the payment of restitution, or  
9 exercise any other authority under this chapter. Further, the  
10 surrender of a license does not release the security required of the  
11 license holder under Section 151.307 or Section 151.506.

12 Sec. 151.209. REFUNDS. No fee or cost paid under this  
13 chapter in connection with an application or renewal is refundable.

14 SUBCHAPTER D. MONEY TRANSMISSION LICENSE

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

18 (b) In this subchapter:

19 (1) "Authorized delegate" means a person a license  
20 holder designates under Section 151.403 to conduct money  
21 transmission on behalf of the license holder.

22 (2) "Currency" means the coin and paper money of the  
23 United States or another country that is designated as legal tender  
24 and circulates and is customarily used and accepted as a medium of  
25 exchange in the country of issuance.

26 (3) "Electronic instrument" means a card or other  
27 tangible object for the transmission, transfer, or payment of money

1 or monetary value, which contains an electronic chip or strip for  
2 the storage of information or that provides access to information.

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

7 (5) "Money transmission" means to receive money or  
8 monetary value by any means in exchange for a promise to make the  
9 money or monetary value available at a later time or different  
10 location. Money transmission includes:

11 (A) selling or issuing stored value or payment  
12 instruments, including checks, money orders and travelers checks;

13 (B) receiving money or monetary value for  
14 transmission, including by payment instrument, wire, facsimile,  
15 electronic transfer or ACH debit;

16 (C) providing third-party bill paying services;  
17 or

18 (D) receiving currency or an instrument payable  
19 in currency to physically transport the currency or its equivalent  
20 from one location to another by motor vehicle or other means of  
21 transportation or through the use of the mail or a shipping,  
22 courier, or other delivery service. The term does not include the  
23 provision solely of online or telecommunication services or  
24 connection services to the internet.

25 (6) "Outstanding" means:

26 (A) with respect to a payment instrument or  
27 stored value, a payment instrument or stored value that has been

1 issued and sold in the United States directly by the license holder,  
2 or sold by an authorized delegate of the license holder in the  
3 United States and reported to the license holder, that has not yet  
4 been paid by or for the license holder; or

5 (B) with respect to transmission, a money  
6 transmission for which the license holder, directly or through its  
7 authorized delegate, has received money or monetary value from the  
8 customer for transmission, but has not yet completed the money  
9 transmission by delivering the money or monetary value to the  
10 person designated by the customer or refunded the money or monetary  
11 value to the customer.

12 (7) "Payment instrument" means a written or electronic  
13 equivalent of a check, draft, money order, traveler's check or  
14 other written or electronic instrument, service or device for the  
15 transmission or payment of money or monetary value, sold or issued  
16 to one or more persons, whether or not negotiable. The term does  
17 not include an instrument, service or device that:

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

20 (B) is redeemed by the issuer in goods or  
21 services or a cash or credit refund under circumstances not  
22 designed to evade the obligations and responsibilities imposed by  
23 this chapter; or

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

25 (8) "Receive" means to obtain possession of money or  
26 monetary value in a manner which cannot be reversed through the  
27 exercise of routine contractual or statutory rights.

1           (9) "Stored value" means monetary value evidenced by  
2 an electronic record that is prefunded and for which value is  
3 reduced upon each use. The term does not include an electronic  
4 record that is loaded with points, miles or other non-monetary  
5 value or that is not sold to the public but is distributed as a  
6 reward or charitable donation.

7           (10) "Unsafe or unsound act or practice" means a  
8 practice or conduct by a license holder or its authorized delegate  
9 that creates the likelihood of material loss, insolvency, or  
10 dissipation of the license holder's assets, or otherwise materially  
11 prejudices the interests the license holder or its customers.

12           Sec. 151.302. LICENSE REQUIRED. (a) A person may not  
13 engage in the business of money transmission or advertise, solicit  
14 or hold itself out as a person that engages in the business of money  
15 transmission unless the person:

16                   (1) is licensed under this subchapter;

17                   (2) is an authorized delegate of a person licensed  
18 under this subchapter, appointed by the license holder in  
19 accordance with Section 151.403;

20                   (3) is excluded under Section 151.003; or

21                   (4) has been granted an exemption under subsection  
22 (c).

23           (b) For purposes of this chapter:

24                   (1) a person engages in the business of money  
25 transmission if the person conducts money transmission for persons  
26 located in Texas and receives compensation or expects to receive  
27 compensation, directly or indirectly, for conducting the



1 transmission; and

2 (2) a person solicits, advertises or holds itself out  
3 as a person that engages in the business of money transmission if  
4 the person represents that it will conduct money transmission for  
5 persons located in Texas.

6 (c) Upon application and a finding that the exemption is in  
7 the public interest, the commissioner may exempt a person that:

8 (1) incidentally engages in the money transmission  
9 business only to the extent reasonable and necessary to accomplish  
10 a primary business objective that is unrelated to the money  
11 transmission business;

12 (2) does not advertise or offer money transmission  
13 services to the public except to the extent reasonable and  
14 necessary to fairly advertise or offer its primary business  
15 services; and

16 (3) either transmits money exclusively in connection  
17 with commercial contracts in interstate commerce or does not charge  
18 a fee to transmit money or transmits money without a fee as an  
19 inducement for customer participation in its primary business.

20 (d) A license holder may engage in the money transmission  
21 business at one or more locations in Texas, directly or indirectly  
22 owned by the license holder, or through one or more authorized  
23 delegates, or both, under a single license granted the license  
24 holder.

25 Sec. 151.303. ADDITIONAL QUALIFICATIONS. (a) In addition  
26 to the general qualifications set out in Section 151.202, an  
27 applicant for a money transmission license must demonstrate to the

1 satisfaction of the commissioner that:

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

4 (2) the applicant's financial condition will enable  
5 the applicant to safely and soundly engage in the business of money  
6 transmission; and

7 (3) the applicant does not engage in any activity or  
8 practice that adversely affects its safety and soundness.

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

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

14 (1) an application fee in the amount established by  
15 rule;

16 (2) audited financial statements that are  
17 satisfactory to the commissioner for purposes of determining  
18 whether the applicant has the minimum net worth required under  
19 Section 151.307 and is likely to maintain the required minimum net  
20 worth if a license is issued; and

21 (3) security in the amount of \$300,000, that meets the  
22 requirements of Section 151.308, and an undertaking or agreement  
23 that the applicant will increase or supplement the security to  
24 equal the aggregate security required by the commissioner under  
25 that section before the issuance of the license and the start of  
26 operations.

27 Sec. 151.305. INVESTIGATION AND ACTION UPON APPLICATION.

1 The commissioner shall investigate the applicant and act upon the  
2 application in accordance with Sections 151.204 and 151.205.

3 Sec. 151.306. TEMPORARY LICENSE. (a) The commissioner may  
4 issue a temporary license to a person that is engaging in money  
5 transmission, but has not obtained a license under this subchapter,  
6 provided the person:

7 (1) certifies in writing that the person qualifies for  
8 the license and will submit a completed license application not  
9 later than the 60th day after the date the temporary license is  
10 issued;

11 (2) submits a recent financial statement acceptable to  
12 the commissioner that reflects the minimum net worth required under  
13 Section 151.307;

14 (3) provides security that meets the requirements of  
15 Section 151.308 in an amount specified by the commissioner, which  
16 amount shall not be less than \$300,000;

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

20 (5) pays the application fee and a nonrefundable  
21 temporary license fee in the amount established by rule.

22 (b) The effective period for a temporary license may not  
23 exceed 90 days from the date the license is issued, provided that  
24 the commissioner may extend the period for up to an additional 30  
25 days if necessary to complete processing of a timely filed  
26 application for which approval is likely.

27 Sec. 151.307. NET WORTH. (a) An applicant for a money

1 transmission license must possess, and a money transmission license  
2 holder must maintain at all times, a minimum net worth computed in  
3 accordance with generally acceptable accounting principles of:

4 (1) \$100,000, if business is proposed to be or is  
5 conducted, directly or through an authorized delegate, at 4 or  
6 fewer locations; or

7 (2) \$500,000, if business is proposed to be or is  
8 conducted, directly or through an authorized delegate, at 5 or more  
9 locations.

10 (b) The commissioner may increase the amount of net worth  
11 required of an applicant or license holder, up to a maximum of  
12 \$1,000,000, if the commissioner determines, with respect to the  
13 applicant or license holder, that a higher net worth is necessary to  
14 achieve the purposes of this chapter based upon:

15 (1) the nature and volume of the projected or  
16 established business;

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

19 (3) the amount, nature, quality and liquidity of its  
20 assets;

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

22 (5) the history of its operations and prospects for  
23 earning and retaining income;

24 (6) the quality of its operations;

25 (7) the quality of its management;

26 (8) the nature and quality of its principals and  
27 persons in control;

1           (9) the history of its compliance with applicable  
2 state and federal law; and

3           (10) such other factors as the commissioners considers  
4 relevant.

5           Sec. 151.308. SECURITY. (a) An applicant for a money  
6 transmission license must provide, and a money transmission license  
7 holder must maintain at all times, a surety bond, irrevocable  
8 letter of credit, or deposit instead of a bond ("security") in  
9 accordance with this section.

10           (b) The amount of the required security is the greater of  
11 \$300,000 or an amount equal to one percent of the license holder's  
12 total yearly dollar volume of money transmission business in Texas  
13 or the applicant's projected total volume of Texas business for the  
14 first year of licensure, up to a maximum of \$2,000,000. When the  
15 amount of the required security exceeds \$1,000,000, the applicant  
16 or license holder may, in the alternative, provide security in the  
17 amount of \$1,000,000, plus a dollar for dollar increase in the net  
18 worth of the applicant or license holder over and above the amount  
19 required under Section 151.307, up to a total amount of \$2,000,000.

20           (c) The security must:

21           (1) be in a form satisfactory to the commissioner;  
22           (2) be payable to any claimant or to the commissioner,  
23 on behalf of a claimant or the State of Texas, for any liability  
24 arising out of the license holder's money transmission business in  
25 this state, incurred under, subject to, or by virtue of this  
26 chapter;

27           (3) be conditioned upon the faithful compliance of the

1 license holder, its principals, responsible individuals, employees  
2 and authorized delegates with this chapter or any rule adopted or  
3 order issued under this chapter; and

4 (4) if a bond, be issued by a qualified surety company  
5 authorized to do business in Texas and acceptable to the  
6 commissioner or, if an irrevocable letter of credit, be issued by a  
7 financial institution acceptable to the commissioner.

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

11 (e) The commissioner may collect any delinquent fee,  
12 assessment, cost, penalty or other amount imposed upon and owed by a  
13 license holder from the security or the proceeds of the security.  
14 If the security is a surety bond, the commissioner shall give the  
15 surety reasonable prior notice of a hearing to impose an  
16 administrative penalty against the license holder, provided that a  
17 surety shall not be considered an interested, aggrieved or affected  
18 person for purposes of an administrative proceeding under Section  
19 151.801 or Chapter 2001, Government Code.

20 (f) The security shall remain in effect until cancelled,  
21 which may occur only after 30 days written notice to the  
22 commissioner. Cancellation shall not affect any liability incurred  
23 or accrued during the period covered by the security.

24 (g) The security shall cover claims for at least five years  
25 after the license holder surrenders its license or otherwise ceases  
26 to engage in activities for which a license is required under this  
27 subchapter. However, the commissioner may permit the amount of the

security to be reduced or eliminated prior to that time to the extent that the amount of the license holder's obligations to the department and to purchasers in Texas is reduced. The commissioner may permit a license holder to substitute another form of security at the time the license holder ceases to provide money transmission in this state.

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

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

(1) must be held in trust in the name of and be pledged to the commissioner, and must secure the same obligations as the security; and

(2) is subject to such other conditions and terms as the commissioner reasonably requires.

(j) The security holder is considered by operation of law to be held in trust for the benefit of the State of Texas and any individual to whom an obligation arising under this chapter is

1 owed, and shall not be considered an asset or property of the  
2 license holder in the event of bankruptcy, receivership or a claim  
3 against the license holder unrelated to its obligations under this  
4 chapter.

5 Sec. 151.309. PERMISSIBLE INVESTMENTS. (a) A money  
6 transmission license holder must maintain at all times permissible  
7 investments that have an aggregate market value computed in  
8 accordance with generally accepted accounting principles in an  
9 amount not less than:

10 (1) if the license holder has a net worth of less than  
11 \$5 million, the aggregate face amount of the license holder's  
12 average outstanding money transmission obligations in the United  
13 States, calculated in the manner required by rule; or

14 (2) if the license holder has net worth of \$5 million  
15 or more, at least 50 percent of the amount required by subsection  
16 (a)(1).

17 (b) Except to the extent limited by subsection (d), the  
18 following constitute permissible investments for purposes of this  
19 section:

20 (1) 40 percent of the receivables due a license holder  
21 from authorized delegates resulting from money transmission under  
22 this chapter that is not past due or doubtful of collection.

23 (2) cash in demand or interest bearing accounts with a  
24 federally insured depository institution, including certificates  
25 of deposit;

26 (3) certificates of deposit or senior debt obligations  
27 of a domestic federally insured depository institution that are



1 readily marketable and insured by an agency of the federal  
2 government;

3 (4) investment grade bonds and other legally created  
4 general obligations of a state, an agency or political subdivision  
5 of a state, the United States, or an instrumentality of the United  
6 States;

7 (5) obligations that a state, and agency or political  
8 subdivision of a state, the United States, or an instrumentality of  
9 the United States has unconditionally agreed to purchase, insure or  
10 guarantee that bear a rating of one of the three highest grades as  
11 defined by a nationally recognized organization that rates  
12 securities;

13 (6) shares in a money market mutual fund if the mutual  
14 fund, under the terms of its governing documents, may only invest in  
15 securities of the type described in paragraphs (4) and (5) or  
16 permitted by rule; and

17 (7) other assets and investments as may be permitted  
18 by rule or approved by the commissioner in writing, based upon a  
19 determination that the assets or investments have a safety  
20 substantially equivalent to other permissible investments.

21 (c) In addition to the investments listed in subsection (b),  
22 permissible investments for purposes of subsection (a) include:

23 (1) the security provided under Section 151.308;

24 (2) a surety bond or letter of credit in addition to  
25 the security provided under Section 151.308, if the additional  
26 surety bond or letter of credit satisfies the requirements of  
27 Section 151.308; and

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

5                   (A) the license holder maintains a surety bond or  
6 letter of credit or has on hand other permissible investments (or a  
7 combination thereof) in an amount sufficient to satisfy the  
8 requirements of subsection (a) with respect to the outstanding  
9 money transmission obligations in Texas; and

10                   (B) the surety bond is issued by a surety rated  
11 within the top two rating categories of a nationally recognized  
12 United States rating service.

13           (d) The commissioner, with respect to any license holder,  
14 may limit or disallow for purposes of determining compliance with  
15 subsection (a) an investment, surety bond, or letter of credit  
16 otherwise permitted by this section if the commissioner determines  
17 it to be unsatisfactory for investment purposes or to pose  
18 significant supervisory concern.

19           (e) The permissible investments subject to this section,  
20 even if commingled with other assets of the license holder, are  
21 considered by operation of the law to be held in trust for the  
22 benefit of any individual to whom an obligation arising under this  
23 chapter is owed, and shall not be considered an asset or property of  
24 the license holder in the event of bankruptcy, receivership or a  
25 claim against the license holder unrelated to its obligations under  
26 this chapter.

27           SUBCHAPTER E. CONDUCT OF MONEY TRANSMISSION BUSINESS

1       Sec. 151.401. LIABILITY OF LICENSE HOLDER. A money  
2 transmission license holder is liable for the payment of all money  
3 or monetary value received for transmission either directly or  
4 through an authorized delegate appointed in accordance with Section  
5 151.402.

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

15       (b) Before a license holder may conduct business through an  
16 authorized delegate or allow a person to act as its authorized  
17 delegate, the license holder must:

18               (1) adopt, and update as necessary, written procedures  
19 and policies designed to ensure that its authorized delegate  
20 complies with applicable state and federal law;

21               (2) enter into a written contract that complies with  
22 subsection (c); and

23               (3) conduct a reasonable risk based background  
24 investigation sufficient for the license holder to determine that  
25 the authorized delegate will comply with applicable state and  
26 federal law.

27       (c) The written contract required by paragraph (2) of

1 subsection (b) must be signed by the license holder and the  
2 authorized delegate and, at a minimum:

3 (1) appoint the person as the license holder's  
4 authorized delegate with the authority to conduct money  
5 transmission on behalf of the license holder;

6 (2) set out the nature and scope of the relationship  
7 between the license holder and the authorized delegate and the  
8 respective rights and responsibilities of the parties;

9 (3) require the authorize delegate to certify that the  
10 delegate is familiar with and agrees to fully comply with all  
11 applicable state and federal statutes and regulations pertaining to  
12 money transmission, including this chapter and the rules adopted  
13 under this chapter, relevant portions of the Bank Secrecy Act, the  
14 U.S.A. Patriot Act, and Chapter 271, Finance Code;

15 (4) require the authorized delegate to remit and  
16 handle money and monetary value in accordance with Section  
17 151.403(b) and (c);

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

20 (6) require the authorized delegate to make and keep  
21 such records as required by this chapter or a rule adopted under  
22 this chapter or as the commissioner reasonably requests;

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

25 (8) state that the license holder is subject to  
26 regulation by the commissioner and that, as part of that  
27 regulation, the commissioner may suspend or revoke an authorized

1 delegate designation or require the license holder to terminate an  
2 authorized delegate designation;

3 (9) acknowledge receipt of the written procedures and  
4 policies required under subsection (b)(1); and

5 (10) acknowledge that the authorized delegate has been  
6 provided regulatory website addresses through which the authorized  
7 delegate can access this chapter and the rules adopted under this  
8 chapter, the Bank Secrecy Act, the U.S.A. Patriot Act, and Chapter  
9 271, Finance Code.

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

16 (e) A license holder must notify the license holder's  
17 authorized delegates and require the delegates to take such action  
18 as the commissioner requires if the license holder:

19 (1) fails to renew the license holder's license; or  
20 (2) is subject to an emergency or final order that  
21 affects the conduct of the license holder's business through an  
22 authorized delegate.

23 (f) A license holder must maintain a current list of  
24 authorized delegates located in Texas that includes the name and  
25 business address of each delegate and must provide the list to the  
26 commissioner upon request. A license holder that does business  
27 through 11 or more authorized delegates located in Texas must

1 include a list of the Texas authorized delegates and the delegates'  
2 addresses, updated quarterly, on the license holder's website.

3 (g) The commission, by rule, may exempt an authorized  
4 delegate that is a federally insured financial institution excluded  
5 under Section 151.003(a)(3) or a foreign bank branch or agency  
6 excluded under Section 151.003(a)(4) from one or more of the  
7 requirements of this chapter.

8 Sec. 151.403. AUTHORIZED DELEGATE CONDUCT. (a) An  
9 authorized delegate:

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

13 (2) must not commit fraud or misrepresentation, or  
14 make any fraudulent or false statement or misrepresentation to a  
15 license holder or the commissioner;

16 (3) must cooperate with an investigation or  
17 examination conducted by the commissioner and is deemed to consent  
18 to the commissioner's examination of its books and records;

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

21 (5) must, upon discovery, immediately report to the  
22 license holder the theft or loss of payment instruments or stored  
23 value;

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

1           (7) must cease to provide money services as an  
2 authorized delegate of a license holder or take other required  
3 action immediately upon receipt of notice from the commissioner or  
4 notice from the license holder as provided for in Section  
5 151.402(e).

6           (b) An authorized delegate shall remit all money owing to  
7 the license holder:

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

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

12                (3) as directed by the commissioner.

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

17                 (1) is in an account solely in the name of the license  
18 holder; and

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

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

27           Sec. 151.404. TRUST IMPOSED. (a) A license holder shall

1 hold in trust all money received for transmission directly or from  
2 an authorized delegate from the time of receipt until the time the  
3 transmission obligation is discharged. A trust resulting from the  
4 license holder's actions is in favor of the persons to whom the  
5 related money transmission obligations are owed.

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

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

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

25 (e) If the commissioner revokes a license holder's license  
26 under Section 151.703, all money held in trust by the license holder  
27 and the license holder's authorized delegates is assigned to the



1 commissioner for the benefit of the persons to whom the related  
2 money transmission obligations are owed.

3 (f) The money of a license holder or authorized delegate  
4 impressed with a trust under this section shall not be considered an  
5 asset or property of the license holder or authorized delegate in  
6 the event of bankruptcy, receivership or a claim against the  
7 license holder or authorized delegate unrelated to its obligations  
8 under this chapter.

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

14 (b) A license holder that receives currency or an instrument  
15 payable in currency for transmission must comply with Chapter 278,  
16 Finance Code.

17 SUBCHAPTER F. CURRENCY EXCHANGE LICENSE

18 Sec. 151.501. DEFINITIONS. (a) The section defines terms  
19 that apply specifically to an applicant for or holder of a currency  
20 exchange license issued under this subchapter.

21 (b) In this subchapter:

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

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

1       Sec. 151.502. LICENSE REQUIRED. (a) A person may not  
2 engage in the business of currency exchange or advertise, solicit  
3 or hold itself out as providing currency exchange unless the  
4 person:

5               (1) is licensed under this subchapter;

6               (2) is licensed for money transmission under  
7 Subchapter D;

8               (3) is an authorized delegate of a person licensed  
9 under Subchapter D;

10              (4) is excluded under Section 151.003; or

11              (5) has been granted an exemption under subsection  
12 (d).

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

17       (c) A license holder may engage in the currency exchange  
18 business at one or more locations in Texas, directly or indirectly  
19 owned by the license holder, under a single license.

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

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

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

3           (3) an attempt is made to structure a transaction in a  
4 manner that evades the licensing requirements of this subchapter or  
5 avoids using a business licensed under this chapter;

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

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

11           (e) In accordance with the investigation provisions of this  
12 chapter, the commissioner may examine a person to verify the  
13 person's exempt status under subsection (d).

14           Sec. 151.503. QUALIFICATIONS. An applicant for a currency  
15 exchange license must possess the qualifications set out in Section  
16 151.202.

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

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

22                   (1) an application fee in the amount established by  
23 rule; and

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

26           Sec. 151.505. INVESTIGATION AND ACTION UPON APPLICATION.  
27 The commissioner shall investigate the applicant and act upon the

1 application in accordance with Sections 151.204 and 151.205.

2 Sec. 151.506. SECURITY. An applicant for a currency  
3 exchange license must provide and a currency exchange license  
4 holder must maintain at all times security in the amount of \$2,500  
5 that satisfies the requirements of and is subject to Section  
6 151.308(c)-(j).

7 SUBCHAPTER G. EXAMINATIONS, REPORTS AND RECORDS

8 Sec. 151.601. EXAMINATIONS. (a) The commissioner may  
9 examine a license holder or authorized delegate of a license holder  
10 as reasonably necessary or appropriate to administer and enforce  
11 this chapter and rules adopted and orders issued under this  
12 chapter, and other applicable law, including the Bank Secrecy Act,  
13 the U.S.A. Patriot Act, and Chapter 271, Finance Code.

14 (b) The commissioner may:

15 (1) conduct an examination annually or at such other  
16 time as the commissioner reasonably requires;

17 (2) conduct an on-site examination or an off-site  
18 review of records;

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

22 (4) accept the examination report of other state  
23 agencies or agencies of another state or of the federal government,  
24 or a report prepared by an independent accounting firm, which  
25 report so accepted is considered for all purposes as an official  
26 report of the commissioner; and

27 (5) summon and examine under oath a principal,

1 responsible individual, or employee of a license holder or  
2 authorized delegate and require such person to produce records  
3 regarding any matter related to the condition and business of the  
4 license holder or authorized delegate.

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

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

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

19 Sec. 151.602. RECORDS. (a) A license holder must make,  
20 keep and preserve the following books, accounts and other records  
21 for at least five years or such other period provided by rule:

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

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

1           (3) bank statements and bank reconciliation records;

2           (4) all records and reports required by applicable  
3 state and federal law, including the reporting and recordkeeping  
4 requirements imposed by Chapter 271, Finance Code, the Bank Secrecy  
5 Act, and the U.S.A. Patriot Act, and other federal and state laws  
6 pertaining to money laundering, drug trafficking or terrorist  
7 funding; and

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

11          (b) The records required under this section may be  
12 maintained at the license holder's principal place of business or  
13 such other location reasonably requested by the commissioner.

14          (c) An authorized delegate must make, keep and preserve the  
15 records required by rule or reasonably requested by the  
16 commissioner.

17          (d) The records required under this section may be  
18 maintained in a photographic, electronic or other similar form, and  
19 are subject to inspection by the commissioner under Section  
20 151.601.

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

25          Sec. 151.603. REPORTS. (a) An applicant or license holder  
26 shall file a written report with the commissioner not later than the  
27 15th day after the applicant or license holder knows or has reason

1 to know of a material change in the information reported in an  
2 application or renewal report. The report must describe the change  
3 and the anticipated impact of the change on the activities of the  
4 applicant or license holder in this state.

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

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

11 (2) quarterly interim financial statements and  
12 reports regarding the permissible investments required to be  
13 maintained under Section 151.310 that reflect the license holder's  
14 financial condition and permissible investments as of the last day  
15 of the calendar quarter to which the statement and report relate are  
16 prepared not later than the 45th day after the last day of such  
17 calendar quarter; and

18 (3) any other reports required by rule or reasonably  
19 requested by the commissioner to determine compliance with this  
20 chapter.

21 (c) A currency exchange license holder shall prepare  
22 written reports and statements as follows:

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

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

7           (3) any other reports required by rule or reasonably  
8 requested by the commissioner to determine compliance with this  
9 chapter.

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

13          (e) Upon written application and for good cause, the  
14 commissioner may extend the time for preparing or filing a  
15 statement or report required under this section.

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

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

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



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

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

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

15           (5) the cancellation or other impairment of the  
16 license holder's security; or

17           (6) the inability to meet its transmission obligations  
18 under this chapter for a period of twenty-four hours or longer.

19           Sec. 151.605. CHANGE OF CONTROL. (a) This section applies  
20 to a proposed change of control of a license holder as a result of  
21 which a person or group of persons acting in concert (proposed  
22 person in control), after consummation of the acquisition  
23 transaction, control the license holder or a person in control of a  
24 license holder.

25           (b) A person shall not directly or indirectly acquire  
26 control of a license holder or a person in control of a license  
27 holder without the prior written approval of the commissioner,

1 except as provided by this section.

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

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

6 (2) request approval of the proposed change of  
7 control; and

8 (3) submit a nonrefundable fee in an amount  
9 established by rule.

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

18 (e) The commissioner shall approve a proposed change of  
19 control if the commissioner determines that the proposed person in  
20 control has the financial responsibility, financial condition,  
21 business experience, competence, character and general fitness to  
22 warrant the belief that the business of the license holder will be  
23 conducted in compliance with this chapter and the rules adopted  
24 under this chapter and other applicable state and federal law and  
25 that the change of control will not jeopardize the interest of the  
26 public.

27 (f) If the commissioner determines that the proposed person

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

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

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

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

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

27 (4) a person exempted in the public interest by rule or

1 by order of the commissioner; and

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

6 (h) Subsection (b) does not apply to public offerings of  
7 securities.

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

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

26 (b) The commissioner may disclose confidential information  
27 if:

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

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

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

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

14           (5) the commissioner discloses the information to a  
15 third party acting on behalf of or for the commissioner for  
16 regulatory or enforcement purposes, subject to an agreement that  
17 maintains the confidentiality of the information.

18           (c) This section does not prohibit the commissioner from  
19 disclosing to the public:

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

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

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

27                   SUBCHAPTER H. ENFORCEMENT

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

7               (1) the commissioner, through the attorney general;  
8               (2) the attorney general;  
9               (3) the district attorney of Travis County; or  
10              (4) the prosecuting attorney of the county in which  
11 the violation is alleged to have occurred.

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

18       (c) An action for injunctive relief brought by the  
19 commissioner, the attorney general, or the district attorney of  
20 Travis County under subsection (a), or brought by the commissioner  
21 under subsection (b), must be brought in a district court in Travis  
22 County. An action brought by a prosecuting attorney under  
23 subsection (a)(4) must be brought in a district court in the county  
24 in which all or part of the violation is alleged to have occurred.

25       (d) Upon a proper showing, the court may issue a restraining  
26 order, an order freezing assets, a preliminary or permanent  
27 injunction or writ of mandate, or may appoint a receiver for the

1 defendant or the defendant's assets.

2 (e) A receiver appointed by the court under subsection (d)  
3 may, with approval of the court, exercise all of the powers of the  
4 defendant's directors, officers, partners, trustees, or persons  
5 who exercise similar powers and perform similar duties.

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

12 Sec. 151.702. UNLICENSED PERSONS. If the commissioner has  
13 reason to believe that an unlicensed person has engaged or is likely  
14 to engage in activities for which a license is required under this  
15 chapter, the commissioner may order the person to cease and desist  
16 from such violation unless and until the person is issued a license  
17 under this chapter. The commissioner's 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 person's violation or likely violation threatens immediate and  
22 irreparable harm to the public.

23 Sec. 151.703. SUSPENSION AND REVOCATION OF LICENSE. (a)  
24 The commissioner must revoke a license if the commissioner finds  
25 that:

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

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

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

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

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

14           (3) the license holder has engaged in fraud, knowing  
15 misrepresentation, deceit or gross negligence in connection with  
16 the operation of its money services business or any transaction  
17 subject to this chapter;

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

24           (5) the competence, experience, character or general  
25 fitness of the license holder or authorized delegate, or a  
26 principal, person in control, or responsible person of a license  
27 holder or authorized delegate, indicates that it is not in the



1 public interest to permit the license holder or authorized delegate  
2 to provide money services;

3 (6) the license holder has engaged in an unsafe or  
4 unsound act or practice or has conducted business in an unsafe or  
5 unsound manner;

6 (7) the license holder has suspended payment of its  
7 obligations, made a general assignment for the benefit of its  
8 creditors, or admitted in writing its inability to pay its debts as  
9 they become due;

10 (8) the license holder has failed to terminate the  
11 authority of an authorized delegate after the commissioner has  
12 issued and served upon the license holder a final order finding that  
13 the authorized delegate has violated this chapter;

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

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

19 (11) the license holder has failed to pay a judgment  
20 entered in favor of a claimant or creditor in an action arising out  
21 of the license holder's activities under this chapter within 30  
22 days after the judgment becomes final or within 30 days after the  
23 expiration or termination of any stay of execution;

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

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

3           (c) In determining whether a license holder has engaged in  
4 an unsafe or unsound act or practice or has conducted business in an  
5 unsafe or unsound manner, the commissioner may consider factors  
6 that include the size and condition of the license holder's  
7 provision of money services, the magnitude of the loss or potential  
8 loss, the gravity of the violation of this chapter or rule adopted  
9 or order issued under this chapter, any action taken against the  
10 license holder of this state, another state or the federal  
11 government, and the previous conduct of the license holder.

12           (d) The commissioner's order suspending or revoking a  
13 license or directing a license holder to revoke the designation of  
14 an authorized delegate is subject to Section 151.709, unless the  
15 order is issued as an emergency order. The commissioner may issue  
16 an emergency order suspending a license or directing a license  
17 holder to revoke the designation of an authorized delegate in  
18 accordance with Section 151.710 if the commissioner finds that the  
19 factors identified in subsection (b) of that section exist.

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

24           (1) the authorized delegate has violated or failed to  
25 comply with this chapter, a rule adopted or order issued under this  
26 chapter, a written agreement entered into with the commissioner or  
27 the department, or any other state or federal law applicable to a

1 money services business;

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

5 (3) the authorized delegate has engaged in fraud,  
6 knowing misrepresentation, deceit, gross negligence, or an unfair  
7 or deceptive act or practice in connection with the operation of its  
8 business on behalf of the license holder or any transaction subject  
9 to this chapter;

10 (4) the competence, experience, character or general  
11 fitness of the authorized delegate, or a principal, person in  
12 control, or responsible person of the authorized delegate,  
13 indicates that it is not in the public interest to permit the  
14 authorized delegate to provide money services;

15 (5) the authorized delegate has engaged in an unsafe  
16 or unsound act or practice or conducted business in an unsafe and  
17 unsound manner;

18 (6) the authorized delegate, or a principal or  
19 responsible person of the authorized delegate, is listed on the  
20 specifically designated nationals and blocked persons list  
21 prepared by the United States Department of Treasury as a potential  
22 threat to commit terrorist acts or to fund terrorist acts; or

23 (7) the authorized delegate, or a principal or  
24 responsible person of the authorized delegate, has been convicted  
25 of a state or federal anti-money laundering or terrorist funding  
26 statute.

27 (b) In determining whether an authorized delegate has

1 engaged in an unsafe or unsound act or practice or conducted  
 2 business in an unsafe or unsound manner, the commissioner may  
 3 consider factors that include the size and condition of the  
 4 authorized delegate's provision of money services, the magnitude of  
 5 the loss or potential loss, the gravity of the violation of this  
 6 chapter or rule adopted or order issued under this chapter, and any  
 7 action against the authorized delegate taken by this state, another  
 8 state or the federal government, and the previous conduct of the  
 9 authorized delegate.

10 (c) The commissioner's order suspending or revoking the  
 11 designation of an authorized delegate is subject to Section  
 12 151.709, unless the order is issued as an emergency order. The  
 13 commissioner may issue an emergency order suspending the  
 14 designation of an authorized delegate in accordance with Section  
 15 151.710 if the commissioner finds that the factors identified in  
 16 subsection (b) of that section exist.

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

20 (1) an action, violation or condition listed in  
 21 Section 151.703 or Section 171.704 exists with respect to a license  
 22 holder or authorized delegate; and

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

26 (b) A cease and desist order may require a license holder or  
 27 authorized delegate to cease and desist from the action or

1 violation or take affirmative action to correct any condition  
2 resulting from or contributing to the action or violation, and the  
3 requirements of the order may apply to a principal or responsible  
4 person of the license holder or authorized delegate.

5 (c) The commissioner's order to cease and desist is subject  
6 to Section 151.709, unless the order is issued as an emergency  
7 order. The commissioner may issue an emergency cease and desist  
8 order in accordance with Section 151.710 if the commissioner finds  
9 that the factors identified in subsection (b) of that section  
10 exist.

11 Sec. 151.706. CONSENT ORDERS. (a) The commissioner may  
12 enter into a consent order at any time with a person to resolve a  
13 matter arising under this chapter or a rule adopted or order issued  
14 under this chapter.

15 (b) A consent order must be signed by the person to whom it  
16 is issued or by the person's authorized representative, and must  
17 indicate agreement with the terms contained in the order. However,  
18 a consent order may provide that it does not constitute an admission  
19 by a person that this chapter or a rule adopted or order issued  
20 under this chapter has been violated.

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

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

25 (1) has violated a provision of this chapter or a rule  
26 adopted or order issued under this chapter and failed to correct the  
27 violation not later than the 30th day after the date the department

1 sends written notice of the violation to the person;

2 (2) if the person is a license holder, has engaged in  
3 conduct specified in Section 171.703;

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

5 (4) has demonstrated wilful disregard for the  
6 requirements of this chapter, the rules adopted under this chapter,  
7 or an order issued under this chapter.

8 (b) A violation that is corrected after a person receives  
9 written notice from the department may be considered for purposes  
10 of determining whether a person has engaged in a pattern of  
11 violation under subsection (a)(2) or demonstrated wilful disregard  
12 under subsection (a)(3).

13 (c) The amount of the penalty may not exceed \$5,000, for  
14 each violation or, in the case of a continuing violation, \$5,000,  
15 for each day that the violation continues. Each transaction in  
16 violation of this chapter and each day that a violation continues is  
17 a separate violation.

18 (d) In determining the amount of the penalty, the  
19 commissioner shall consider such factors as the seriousness of the  
20 violation, the person's compliance history, and the person's good  
21 faith in attempting to comply with this chapter, provided, however,  
22 that if the person is found to have demonstrated wilful disregard  
23 under subsection (a)(3), the trier of fact shall recommend that the  
24 commissioner impose the maximum administrative penalty permitted  
25 under subsection (c).

26 (e) A hearing to assess an administrative penalty is  
27 considered a contested case hearing and is subject to Section

1 151.801.

2 (f) An order imposing an administrative penalty after  
3 notice and hearing becomes effective and is final for purposes of  
4 collection and appeal immediately upon issuance.

5 (g) The commissioner may collect an administrative penalty  
6 assessed under this section:

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

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

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

14 (1) intentionally makes a false statement,  
15 misrepresentation or certification in a record or application filed  
16 with the department or required to be maintained under this chapter  
17 or a rule adopted or order issued under this chapter, or  
18 intentionally makes a false entry or omits a material entry in such  
19 a record or application; or

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

23 (b) An offense under this section is a third degree felony.

24 (c) If the commissioner has reason to believe that a person  
25 has committed an offense under this section or an offense under any  
26 other state or federal law, the commissioner may file a criminal  
27 referral with the district attorney of Travis County or an

1 appropriate prosecuting attorney of the county in which the offense  
2 is alleged to have been committed.

3 (d) Nothing in this section limits the power of the state to  
4 punish a person for any act which constitutes an offense under any  
5 statute.

6 Sec. 151.709. NOTICE, HEARING AND OTHER PROCEDURES FOR  
7 NON-EMERGENCY ORDERS. (a) This section applies to an order issued  
8 by the commissioner under this subchapter that is not an emergency  
9 order.

10 (b) An order subject to this section becomes effective only  
11 after notice and an opportunity for hearing. The order must:

12 (1) state the grounds upon which the order is based;

13 (2) to the extent applicable, state the action or  
14 violation from which the person subject to the order must cease and  
15 desist or the affirmative action such person must take to correct a  
16 condition resulting from the violation or that is otherwise  
17 appropriate;

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

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

24 (5) include a notice that a person may request a  
25 hearing on the order by filing a written request for hearing with  
26 the commissioner not later than the 20th day after the date the  
27 order is delivered or mailed.



1        (c) Unless the commissioner receives a written request for  
2 hearing from the person against whom the order is directed not later  
3 than the 20th day after the date the order is delivered or mailed,  
4 the order takes effect as stated in the order and is final and  
5 nonappealable as to that person as of that date.

6        (d) A hearing on the order must be held not later than the  
7 45th day after the date the commissioner receives the written  
8 request for hearing unless the administrative law judge extends the  
9 period for good cause or the parties agree to a later hearing.

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

14       Sec. 151.710. REQUIREMENTS AND NOTICE AND HEARING  
15 PROCEDURES FOR EMERGENCY ORDERS. (a) This section applies to an  
16 order issued by the commissioner under this subchapter as an  
17 emergency order.

18       (b) The commissioner may issue an emergency order, without  
19 prior notice and an opportunity for hearing, if the commissioner  
20 finds that:

21           (1) the action, violation or condition that is the  
22 basis for the order has or is likely to:

23                   (A) cause the insolvency of the license holder;  
24                   (B) cause the substantial dissipation of the  
25 license holder's assets or earnings;

26                   (C) seriously weaken the condition of the license  
27 holder; or

1                   (D) seriously prejudice the interests of the  
2 license holder, purchasers of the license holder's money services,  
3 or the public; and

4                   (2) immediate action is necessary to protect the  
5 interests of the license holder, purchasers of the license holder's  
6 money services, or the public.

7                   (c) In connection with and as directed in an emergency  
8 order, the commissioner may seize the records and assets of a  
9 license holder or authorized delegate that relate to the license  
10 holder's money services business.

11                   (d) An emergency order must:

12                         (1) state the grounds upon which the order is based;

13                         (2) advise the person against whom the order is  
14 directed that the order takes effect immediately, and, to the  
15 extent applicable, require the person to immediately cease and  
16 desist from the conduct or violation that is the subject of the  
17 order or take such affirmative action as is necessary to correct a  
18 condition resulting from the conduct or violation or is otherwise  
19 appropriate;

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

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

27                   (e) An emergency order takes effect as soon as the person

1 against whom the order is directed has constructive knowledge of  
2 the issuance of the order.

3 (f) A license holder or authorized delegate against whom an  
4 emergency order is directed must submit a written certification to  
5 the commissioner, signed by the license holder or authorized  
6 delegate, and their principals and responsible individuals, as  
7 applicable, and each person named in the order, stating that each  
8 has received a copy of and has read and understands the order.

9 (g) Unless the commissioner receives a written request for  
10 hearing from a person against whom an emergency order is directed  
11 not later than the 15th day after the date the order is delivered or  
12 mailed, the order is final and nonappealable as to that person on  
13 the 16th day after the date the order is delivered or mailed.

14 (h) A request for hearing does not stay an emergency order.

15 (i) A hearing on an emergency order takes precedence over  
16 other matters pending before the commissioner, and must be held not  
17 later than the 10th day after the date the commissioner receives the  
18 written request for hearing unless the administrative law judge  
19 extends the period for good cause or the parties agree to a later  
20 hearing.

21 (j) An emergency order that has been affirmed or modified  
22 after hearing is final for purposes of enforcement and appeal. The  
23 order may be appealed to the district court of Travis County as  
24 provided in 151.801(b).

25 SUBCHAPTER I. ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

26 Sec. 151.801. ADMINISTRATIVE PROCEDURES. (a) All  
27 administrative proceedings under this chapter must be conducted in

1 accordance with Chapter 2001, Government Code, and Title 7, Chapter  
2 9, Texas Administrative Code.

3 (b) A person affected by a final order of the commissioner  
4 issued under this chapter after hearing may appeal the order by  
5 filing a petition for judicial review in a district court of Travis  
6 County. A petition for review filed in the district court does not  
7 stay or vacate the appealed order unless the court, after notice and  
8 hearing, specifically stays or vacates the order.

9 SECTION 2. EFFECTIVE DATE. This Act takes effect September  
10 1, 2005.

11 SECTION 3. SAVINGS AND TRANSITIONAL PROVISIONS. (a) A  
12 license issued under Chapter 152, Finance Code, or Chapter 153,  
13 Finance Code, that is in effect on September 1, 2005, remains in  
14 force as a license under Chapter 152, Finance Code, or Chapter 153,  
15 Finance Code, until August 15, 2006. The license expires on August  
16 15, 2006, unless the license holder renews the license in  
17 accordance with this Act. Except as provided in this section, a  
18 license holder that seeks to renew its license must satisfy the net  
19 worth, security, permissible investment, and other substantive  
20 requirements for licensure established in this Act.

21 (b) A person licensed under Chapter 153, Finance Code, as of  
22 September 1, 2005, to engage in the business of currency  
23 transmission or currency transportation has until August 15, 2011,  
24 to satisfy the net worth and permissible investment requirements  
25 established in this Act. The commissioner may extend the period  
26 beyond that date on a year by year basis for good cause.

27 (c) A person licensed under Chapter 153, Finance Code, as of

1 September 1, 2005, to engage in the business of currency  
2 transmission or currency transportation has until August 15, 2007,  
3 to satisfy the security requirements established in this Act.

4 (d) A contract between a license holder and an authorized  
5 delegate in effect as of September 1, 2005, remains in effect until  
6 the contract is renewed or December 31, 2006, whichever occurs  
7 first. A new or renewal contract entered into between a license  
8 holder and an authorized delegate after the effective date of this  
9 Act must satisfy the contract requirements established in this Act.

10 (e) The commission may adopt rules to further provide for  
11 the orderly transition to licensing and regulation under this Act.

12 SECTION 4. REPEALER. The Sale of Checks Act, Chapter 152,  
13 Finance Code, and Chapter 153, Finance Code, relating to currency  
14 exchange, transportation, or transmission, are repealed effective  
15 September 1, 2005.