

HOUSE BILL 250

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Zachary J. Cook and Daniel A. Ivey-Soto

This document incorporates committee amendments adopted during standing committee(s) consideration of this measure. It is a tool to show the amendments in context and is not to be used for introduction, amendment or substitution.

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; ENACTING THE UNIFORM MONEY SERVICES ACT; CREATING A FRAMEWORK FOR THE LICENSURE OF PERSONS OR BUSINESSES TO ENGAGE IN MONEY TRANSMISSIONS, CHECK CASHING AND CURRENCY EXCHANGE; PROVIDING POWERS AND DUTIES FOR THE DIRECTOR OF THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PRESCRIBING CIVIL AND CRIMINAL PENALTIES; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Article 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Money Services Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Money Services Act:

A. "applicant" means a person that files an

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application for a license pursuant to the Uniform Money Services Act;

B. "authorized delegate" means a person that a licensee designates to provide money services on behalf of the licensee;

C. "bank" means an institution organized under federal or state law that:

(1) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(2) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than one hundred thousand dollars (\$100,000) and does not engage in the business of making commercial loans;

D. "check cashing" means receiving compensation for taking payment instruments or stored value, other than traveler's checks, in exchange for money, payment instruments or stored value delivered to the person delivering the payment instrument or stored value at the time and place of delivery without an agreement specifying when the person taking the payment instrument will present it for collection;

E. "control" means:

(1) ownership of, or the power to vote,

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directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(2) the power to elect, appoint, choose or otherwise designate, directly or indirectly, a majority of executive officers, managers, directors, trustees or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;

F. "currency exchange" means receipt of revenues from the exchange of money of one government for money of another government;

G. "director" means the director of the financial institutions division of the regulation and licensing department;

H. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

I. "executive officer" means a president, chair of the executive committee, chief financial officer, responsible individual or other individual who performs similar functions;

J. "internet-based money services business" means a business that provides money transmission, check cashing or

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currency exchange services to residents of New Mexico through the internet;

K. "licensee" means a person licensed pursuant to the Uniform Money Services Act;

L. "limited station" means private premises where a check casher is authorized to engage in check cashing solely for the employees of the particular employer or group of employers specified in the check casher's license application;

M. "mobile location" means a vehicle or a movable facility where check cashing occurs;

N. "monetary value" means a medium of exchange, whether or not redeemable in money;

O. "money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments;

P. "money services" means money transmission, check cashing or currency exchange;

Q. "money transmission" means selling or issuing payment instruments, stored value or receiving money or monetary value for transmission. "Money transmission" does not include the provision solely of delivery, online or telecommunications services or network access;

R. "nationwide mortgage licensing system and

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registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

S. "outstanding", with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee;

T. "payment instrument" means a check, draft, money order, traveler's check or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit or instrument that is redeemable by the issuer in goods or services;

U. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

V. "record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

W. "responsible individual" means an individual who

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is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in New Mexico;

X. "sign" means, with present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic sound, symbol or process;

Y. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

Z. "stored value" means monetary value that is evidenced by an electronic record;

AA. "unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry; and

BB. "unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person that creates the likelihood of material loss, insolvency or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

SECTION 103. [NEW MATERIAL] EXCLUSIONS.--The Uniform Money Services Act does not apply to:

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A. the United States or a department, agency or instrumentality thereof;

B. money transmission by the United States postal service or by a contractor on behalf of the United States postal service;

C. a state, county, city or any other governmental agency or governmental subdivision of a state;

D. a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act or corporation organized pursuant to the federal Edge Act;

E. electronic funds transfer of governmental benefits for a federal, state, county or governmental agency by a contractor on behalf of the United States or a department, agency or instrumentality thereof, or a state or governmental subdivision, agency or instrumentality thereof;

F. a board of trade designated as a contract market pursuant to the federal Commodity Exchange Act or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

G. a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

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H. a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

I. an operator of a payment system to the extent that it provides processing, clearing or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers or similar funds transfers;

J. a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

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

L. a credit union regulated and insured by the national credit union association; or

M. any other person, transaction or class of persons or transactions exempted by the director's rule or any other person or transaction exempted by the director's order pursuant to a finding that the licensing of the person or transaction is not necessary to achieve the purposes of the

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Uniform Money Services Act.

Article 2

MONEY TRANSMISSION LICENSES

SECTION 201. [NEW MATERIAL] LICENSE REQUIRED.--

A. A person shall not engage in the business of money transmission or advertise, solicit or hold itself out as providing money transmission unless the person:

(1) is licensed pursuant to Article 2 of the Uniform Money Services Act; or

(2) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 2 of the Uniform Money Services Act is not transferable or assignable.

SECTION 202. [NEW MATERIAL] APPLICATION FOR LICENSE.--

A. A person applying for a license pursuant to Article 2 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

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(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in New Mexico;

(4) a list of the applicant's proposed authorized delegates and the locations in New Mexico where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions or other disciplinary action taken against the applicant in another state;

(6) information concerning any bankruptcy or receivership proceedings affecting the applicant;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments and stored value will be paid;

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(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the director reasonably requires with respect to the applicant.

B. In order to fulfill the purposes of the Uniform Money Services Act, the director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to applicants or other individuals subject to that act.

C. In connection with an application for licensing pursuant to Article 2 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry the following information in a form and medium prescribed by the nationwide mortgage licensing system and registry:

(1) the applicant's history and experience; and

(2) an authorization for the nationwide mortgage licensing system and registry and the director to obtain:

- (a) an independent credit report; and
- (b) information related to any

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administrative, civil or criminal findings by any governmental jurisdiction.

D. If an applicant is a corporation, limited liability company, partnership or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses and the employment in the ten-year period next preceding the submission of the application of each executive officer, manager, director or person that has control of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director or person in control of the applicant has been involved in the ten-year period next preceding the submission of the application;

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(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission pursuant to Section 13 of the federal Securities Exchange Act of 1934;

(9) if the applicant is a wholly owned subsidiary of:

(a) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed pursuant to Section 13 of the federal Securities Exchange Act of 1934; or

(b) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) if the applicant has a registered agent in New Mexico, the name and address of the applicant's

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registered agent in New Mexico; and

(11) any other information the director reasonably requires with respect to the applicant.

E. A nonrefundable application fee of two thousand dollars (\$2,000) and a nonrefundable license fee of two thousand dollars (\$2,000) shall accompany an application for a license pursuant to Article 2 of the Uniform Money Services Act. The application shall also be accompanied by the surety bond or other security required by Section 203 of the Uniform Money Services Act.

F. The director may waive one or more requirements of Subsection C or D of this section or permit an applicant to submit other information in lieu of the required information.

G. As used in this section, "material litigation" means litigation that, according to generally accepted accounting principles, is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders or similar records.

SECTION 203. [NEW MATERIAL] SECURITY.--

A. Except as otherwise provided in Subsection B of this section, a surety bond, letter of credit, or other similar security acceptable to the director shall accompany an application for a license pursuant to Article 2 of the Uniform

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Money Services Act. Except as otherwise provided in Subsections D and F of this section, the required security shall be in the amount of three hundred thousand dollars (\$300,000) or an amount equal to one percent of the licensee's total yearly dollar volume of money transmission business in this state or the applicant's projected total volume of business in this state for the first year of licensure, whichever is greater, up to a maximum of two million dollars (\$2,000,000).

B. The security shall be in form and substance and from an issuer satisfactory to the director and payable to New Mexico for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

C. The aggregate liability on a surety bond shall not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond or the director may maintain an action on behalf of the claimant.

D. A surety bond shall cover claims for so long as the director specifies, but for at least five years after the licensee ceases to provide money services in New Mexico. However, the director may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in New Mexico is reduced.

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The director may permit a licensee to substitute another form of security acceptable to the director for the security effective at the time the licensee ceases to provide money services in New Mexico.

E. In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in form and substance and from an issuer prescribed by the director.

F. The director may increase the amount of security required to a maximum of five million dollars (\$5,000,000) if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses or other relevant criteria.

SECTION 204. [NEW MATERIAL] ISSUANCE OF LICENSE.--

A. When an application is filed pursuant to Article 2 of the Uniform Money Services Act, the director shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The director may conduct an onsite investigation of the applicant, in New Mexico or in any other state or country, the reasonable cost of which the applicant shall pay. The director shall issue a license to an applicant pursuant to Article 2 of the Uniform Money Services Act if the director finds that all of the following conditions have been fulfilled:

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(1) the applicant has complied with Sections 202, 203 and 206 of the Uniform Money Services Act; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

B. When an application for an original license pursuant to Article 2 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved;
and

(b) the license takes effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

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D. An applicant whose application is denied by the director pursuant to Article 2 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of the notice of the denial, and request a hearing.

SECTION 205. [NEW MATERIAL] RENEWAL OF LICENSE.--

A. A license issued pursuant to Article 2 of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 2 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars (\$1,000) and twenty-five dollars (\$25.00) for each authorized delegate before November 1 of each year or, if November 1 is not a business day, on the next business day.

B. A licensee pursuant to Article 2 of the Uniform Money Services Act shall submit a renewal report with the renewal fee, in a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number and monetary amount of payment instruments and stored value sold by the licensee in New Mexico

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that have not been included in a renewal report and the monetary amount of payment instruments and stored value currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in Sections 701 and 702 of the Uniform Money Services Act;

(5) proof that the licensee continues to maintain adequate security as required by Section 203 of the Uniform Money Services Act; and

(6) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

C. If a licensee does not file a renewal report or pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension.

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The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee;
and

(2) pays one hundred dollars (\$100) for each day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

SECTION 206. [NEW MATERIAL] NET WORTH.--A licensee pursuant to Article 2 of the Uniform Money Services Act shall maintain a net worth of at least the following amounts determined in accordance with generally accepted accounting principles:

A. for one to four locations of the licensee and authorized delegates in New Mexico, one hundred thousand dollars (\$100,000); and

B. for five or more locations of the licensee and authorized delegates in New Mexico or for an internet-based money services business, five hundred thousand dollars (\$500,000).

Article 3

CHECK CASHING LICENSES

SECTION 301. [NEW MATERIAL] LICENSE REQUIRED.--

A. A person shall not engage in check cashing or

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advertise, solicit or hold itself out as providing check cashing for which the person receives at least five hundred dollars (\$500) within a thirty-day period unless the person:

(1) is licensed pursuant to Article 3 of the Uniform Money Services Act;

(2) is licensed for money transmission pursuant to Article 2 of the Uniform Money Services Act;

(3) is licensed for currency exchange pursuant to Article 4 of the Uniform Money Services Act; or

(4) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 3 of the Uniform Money Services Act is not transferable or assignable.

SECTION 302. [NEW MATERIAL] APPLICATION FOR LICENSE.--

A. A person applying for a license pursuant to Article 3 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant if the applicant is an individual or, if the applicant is not an individual, the name

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of each partner, executive officer, manager and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in New Mexico where the applicant proposes to engage in check cashing or currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the director reasonably requires with respect to the applicant, but not more than the director may require pursuant to Article 2 of the Uniform Money Services Act.

B. In connection with an application for licensing pursuant to Article 3 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry the following information in a form and medium prescribed by the nationwide mortgage licensing system and registry:

(1) the applicant's history and experience;
and

(2) an authorization for the nationwide mortgage licensing system and registry and the director to obtain:

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(a) an independent credit report; and
(b) information related to any
administrative, civil or criminal findings by any governmental
jurisdiction.

C. A nonrefundable application fee of two thousand
dollars (\$2,000) and a nonrefundable license fee of two
thousand dollars (\$2,000) shall accompany an application for a
license pursuant to Article 3 of the Uniform Money Services
Act.

SECTION 303. [NEW MATERIAL] ISSUANCE OF LICENSE.--

A. When an application is filed pursuant to Article
3 of the Uniform Money Services Act, the director shall
investigate the applicant's financial condition and
responsibility, financial and business experience, character
and general fitness. The director may conduct an onsite
investigation of the applicant, in New Mexico or in any other
state or country, the reasonable cost of which the applicant
shall pay. The director shall issue a license to an applicant
pursuant to Article 3 of the Uniform Money Services Act if the
director finds that all of the following conditions have been
fulfilled:

- (1) the applicant has complied with Section
302 of the Uniform Money Services Act; and
- (2) the financial condition and
responsibility, financial and business experience, competence,

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character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in check cashing.

B. When an application for an original license pursuant to Article 3 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved;

and

(b) the director shall issue the license, pursuant to Article 3 of the Uniform Money Services Act, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

D. An applicant whose application is denied by the director pursuant to Article 3 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of

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the notice of the denial, and request a hearing.

SECTION 304. [NEW MATERIAL] RENEWAL OF LICENSE.--

A. A license issued pursuant to Article 3 of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 3 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars (\$1,000) before November 1 of each year or, if November 1 is not a business day, on the next business day.

B. A licensee pursuant to Article 3 of the Uniform Money Services Act shall submit a renewal report with the renewal fee in a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report; and

(2) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in check cashing or currency exchange, including limited stations and mobile locations.

C. If a licensee does not file a renewal report or pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the

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report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension. The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee;
and

(2) pays one hundred dollars (\$100) for each day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

Article 4

CURRENCY EXCHANGE LICENSES

SECTION 401. [NEW MATERIAL] LICENSE REQUIRED.--

A. A person shall not engage in currency exchange or advertise, solicit or hold itself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person:

(1) is licensed pursuant to Article 4 of the Uniform Money Services Act;

(2) is licensed for money transmission pursuant to Article 2 of the Uniform Money Services Act;

(3) is licensed for check cashing pursuant to Article 3 of the Uniform Money Services Act; or

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(4) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 4 of the Uniform Money Services Act is not transferable or assignable.

SECTION 402. [NEW MATERIAL] APPLICATION FOR LICENSE.--

A. A person applying for a license pursuant to Article 4 of the Uniform Money Services Act shall apply in a record signed under penalty of perjury that shall be in a form and in a medium required by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director. The form shall include the following information:

(1) the legal name and residential and business addresses of the applicant if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in New Mexico where the applicant proposes to engage in currency exchange or check cashing, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing

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and currency exchange; and

(5) other information the director reasonably requires with respect to the applicant, but not more than the director may require pursuant to Article 2 of the Uniform Money Services Act.

B. In connection with an application for licensing pursuant to Article 4 of the Uniform Money Services Act, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry the following information in a form and medium prescribed by the nationwide mortgage licensing system and registry:

(1) the applicant's history and experience;
and

(2) an authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(a) an independent credit report; and
(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

C. A nonrefundable application fee of two thousand dollars (\$2,000) and a nonrefundable license fee of two thousand dollars (\$2,000) shall accompany an application for a license pursuant to Article 4 of the Uniform Money Services Act.

SECTION 403. [NEW MATERIAL] ISSUANCE OF LICENSE.--

A. When an application is filed pursuant to Article 4 of the Uniform Money Services Act, the director shall investigate the applicant's financial condition and responsibility, financial and business experience, character and general fitness. The director may conduct an onsite investigation of the applicant, in New Mexico or in any other state or country, the reasonable cost of which the applicant shall pay. The director shall issue a license to an applicant pursuant to Article 4 of the Uniform Money Services Act if the director finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 402 of the Uniform Money Services Act; and

(2) the financial condition and responsibility, financial and business experience, competence, character and general fitness of the applicant and the competence, experience, character and general fitness of the executive officers, managers, directors and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

B. When an application for an original license pursuant to Article 4 of the Uniform Money Services Act is complete, the director shall promptly notify the applicant in a record of the date on which the application was determined to

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be complete and:

(1) the director shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date:

(a) the application is deemed approved;

and

(b) the director shall issue the license, pursuant to Article 4 of the Uniform Money Services Act, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

C. The director may for good cause extend the application period.

D. An applicant whose application is denied a license by the director pursuant to Article 4 of the Uniform Money Services Act may appeal the denial, within thirty days after receipt of the notice of the denial, and request a hearing.

SECTION 404. [NEW MATERIAL] RENEWAL OF LICENSE.--

A. A license issued pursuant to Article 4 of the Uniform Money Services Act shall expire on December 31 each year. A licensee pursuant to Article 4 of the Uniform Money Services Act shall pay an annual renewal fee of one thousand dollars (\$1,000) before November 1 of each year or, if November 1 is not a business day, on the next business day.

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B. A licensee pursuant to Article 4 of the Uniform Money Services Act shall submit a renewal report with the renewal fee in a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director. The renewal report shall state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the director on any required report; and

(2) a list of the locations in New Mexico where the licensee or an authorized delegate of the licensee engages in currency exchange or check cashing, including limited stations and mobile locations.

C. If a licensee does not file a renewal report and pay its renewal fee by the renewal date or any extension of time granted by the director, the director shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the director sends the notice of suspension. The suspension shall be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee;
and

(2) pays one hundred dollars (\$100) for each

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day after suspension that the director did not receive the renewal report and the renewal fee.

D. The director for good cause may grant an extension of the renewal date.

Article 5

AUTHORIZED DELEGATES

SECTION 501. [NEW MATERIAL] RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED DELEGATE.--

A. As used in this section, "remit" means:

(1) to make direct payments of money to a licensee or its representative authorized to receive money; or

(2) to deposit money in a bank in an account specified by the licensee.

B. A contract between a licensee and an authorized delegate shall require the authorized delegate to operate in full compliance with the Uniform Money Services Act. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with the Uniform Money Services Act.

C. For each authorized delegate, the licensee shall maintain records that demonstrate the licensee conducted a reasonable background investigation of each authorized delegate. A licensee shall preserve those records for at least five years after the authorized delegate's most recent designation by the licensee.

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D. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

E. If a license is suspended or revoked or a licensee does not renew its license, the director shall notify all authorized delegates of the licensee whose names are in a record filed with the director of the suspension, revocation or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

F. An authorized delegate shall not provide money services outside the scope of activity permissible pursuant to the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage pursuant to Article 2, 3 or 4 of the Uniform Money Services Act. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

G. An authorized delegate shall not use a subdelegate to conduct money services on behalf of a licensee.

H. Whenever a licensee first advises the director of the identity of a proposed delegate, the licensee shall pay a nonrefundable fee of twenty-five dollars (\$25.00) for each proposed delegate.

SECTION 502. [NEW MATERIAL] UNAUTHORIZED ACTIVITY.--A

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person shall only act as a delegate for a licensee. A person that provides money services on behalf of a person not licensed pursuant to the Uniform Money Services Act is considered to act in its own capacity and may be subject to civil and criminal penalties for providing money services without a license.

Article 6

EXAMINATIONS; REPORTS; RECORDS

SECTION 601. [NEW MATERIAL] AUTHORITY TO CONDUCT EXAMINATIONS.--

A. The director may conduct an annual examination of a licensee or of any of its authorized delegates upon forty-five days' notice in a record to the licensee.

B. The director may examine a licensee or its authorized delegate at any time, without notice, if the director has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act.

C. If the director concludes that an onsite examination is necessary pursuant to Subsection A of this section, in New Mexico or in any other state or country, the licensee shall pay the reasonable cost of the examination.

D. Information obtained during an examination pursuant to the Uniform Money Services Act may be disclosed only as provided in Section 607 of that act.

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SECTION 602. [NEW MATERIAL] COOPERATION.--The director may consult and cooperate with other state agencies, agencies of another state or of the United States or the nationwide mortgage licensing system and registry in enforcing and administering the Uniform Money Services Act. They may jointly pursue examinations and take other official action that they are otherwise empowered to take.

SECTION 603. [NEW MATERIAL] REPORTS.--

A. A licensee shall file with the director a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director and that shall contain any material change in information provided in the licensee's application or the information provided by the licensee to the nationwide mortgage licensing system and registry. The record shall be filed within fifteen business days after the licensee has reason to know of the change.

B. A licensee shall file with the director within forty-five days after the end of each fiscal quarter a record signed under penalty of perjury that shall be in a form and in a medium prescribed by the director and that shall contain a current list of all authorized delegates and locations in New Mexico where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

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C. A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(1) the filing of a petition by or against the licensee pursuant to the United States Bankruptcy Code for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director or person in control of the licensee for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

D. The report required pursuant to Subsection C of this section shall be a record signed under penalty of perjury and in a form and in a medium prescribed by the director and shall describe the event requiring the report.

SECTION 604. [NEW MATERIAL] CHANGE OF CONTROL.--

A. A licensee shall:

(1) give the director notice in a record signed under penalty of perjury in a form and in a medium prescribed by the director of a proposed change of control within fifteen days after learning of the proposed change of control;

(2) request approval by the director of the proposed change of control; and

(3) submit a nonrefundable fee of two thousand dollars (\$2,000) with the notice.

B. After review of a request for approval pursuant to Subsection A of this section, the director may require the licensee to provide in a record signed under penalty of perjury in a form and in a medium prescribed by the director additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

C. The director shall approve a request for change of control pursuant to Subsection A of this section if, after investigation, the director determines that the person or group of persons requesting approval has the competence, experience, character and general fitness to operate the licensee or person

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in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

D. When an application for a change of control pursuant to Article 6 of the Uniform Money Services Act is complete, the director shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the director shall approve or deny the request within one hundred twenty days after that date; or

(2) if the request is not approved or denied within one hundred twenty days after that date:

(a) the request is deemed approved; and

(b) the director shall permit the change of control, pursuant to this section, to take effect as of the first business day after expiration of the one-hundred-twenty-day period.

E. The director, by rule or order, may exempt a person from any of the requirements of Paragraphs (2) and (3) of Subsection A of this section if it is in the public interest to do so.

F. Subsection A of this section does not apply to a public offering of securities.

G. Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a

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person may request in a record a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of Subsections A through C of this section.

SECTION 605. [NEW MATERIAL] RECORDS.--

A. A licensee shall maintain the following records for determining its compliance with the Uniform Money Services Act for at least three years:

- (1) a record of each payment instrument or stored-value obligation sold;
- (2) a general ledger posted at least monthly containing all asset, liability, capital, income and expense accounts;
- (3) bank statements and bank reconciliation records;
- (4) records of outstanding payment instruments and stored-value obligations;
- (5) records of each payment instrument and stored-value obligation paid within the three-year period;
- (6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

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(7) any other records the director reasonably requires by rule.

B. The items specified in Subsection A of this section may be maintained in writing, electronically or in any other form of record that is permitted by the director.

C. Records may be maintained outside New Mexico if they are made accessible to the director on seven business-days' notice that is sent in a record.

D. All records maintained by the licensee as required in Subsections A through C of this section are open to inspection by the director pursuant to Section 601 of the Uniform Money Services Act.

SECTION 606. [NEW MATERIAL] MONEY LAUNDERING REPORTS.--

A. A licensee and an authorized delegate shall file with the New Mexico attorney general all reports required by federal currency reporting, recordkeeping and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 et seq. (1994) or any successor law; and other federal and state laws pertaining to money laundering.

B. The timely filing of a complete and accurate report required under Subsection A of this section with the appropriate federal agency is compliance with the requirements of that subsection, unless the director notifies the licensee that the New Mexico attorney general has notified the director that reports of this type are not being regularly and

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comprehensively made available by the federal agency to the New Mexico attorney general.

C. In connection with each transaction that involves transmitting money in an amount of one thousand dollars (\$1,000) or more, whether sending or receiving, a licensee or, for a transaction conducted through an authorized delegate, an authorized delegate, shall retain a record of each of the following:

(1) the name and social security or taxpayer identification number, if any, of the individual presenting the transaction and of the person and the entity on whose behalf the transaction is to be effected;

(2) the type and number of the customer's verified photographic identification as described in 31 Code of Federal Regulations Section 1010.312 or any successor regulations;

(3) the customer's current occupation;

(4) the customer's current residential address; and

(5) the customer's signature.

D. The provisions of Subsection C of this section shall not apply to transactions by which a licensee's customer is making a bill payment to:

(1) a commercial creditor pursuant to a contract between the licensee and the commercial creditor; or

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(2) a utility company.

SECTION 607. [NEW MATERIAL] CONFIDENTIALITY.--

A. Except as otherwise provided in Subsection B of this section, all information or reports obtained by the director from an applicant, licensee or authorized delegate and all information contained in or related to examination, investigation, operating or condition reports prepared by, on behalf of or for the use of the director, or financial statements, balance sheets or authorized delegate information, are confidential and are not subject to disclosure pursuant to the Public Records Act or any similar law.

B. The director may disclose information not otherwise subject to disclosure pursuant to Subsection A of this section to representatives of state or federal agencies who promise in a record signed under penalty of perjury in a form and in a medium prescribed by the director that they will maintain the confidentiality of the information or if the director finds that the release is reasonably necessary for the protection of the public and is in the interests of justice and the licensee has been given not fewer than ten days' notice in a record by the director of the director's intent to release the information.

C. This section does not prohibit the director from disclosing to the public a list of persons licensed pursuant to the Uniform Money Services Act or the aggregated financial data

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concerning those licensees.

Article 7

PERMISSIBLE INVESTMENTS

SECTION 701. [NEW MATERIAL] MAINTENANCE OF PERMISSIBLE INVESTMENTS.--

A. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored-value obligations issued or sold in all states and money transmitted from all states by the licensee.

B. The director, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The director by rule may prescribe or by order allow other types of investments that the director determines to have a safety substantially equivalent to other permissible investments.

C. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

SECTION 702. [NEW MATERIAL] TYPES OF PERMISSIBLE

INVESTMENTS.--

A. Except to the extent otherwise limited by the director pursuant to Section 701 of the Uniform Money Services Act, the following investments are permissible pursuant to Section 701 of that act:

(1) cash, a certificate of deposit or senior debt obligation of an insured depository institution as defined in Section 3 of the Federal Deposit Insurance Act;

(2) a banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

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

(4) an investment security that is an obligation of the United States or a department, agency or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts that are not more than ten days

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past due or doubtful of collection if the aggregate amount of receivables pursuant to this paragraph does not exceed fifty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables pursuant to this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission pursuant to the federal Investment Company Act of 1940 and whose portfolio is restricted by the management company's investment policy to investments specified in Paragraphs (1) through (4) of this subsection.

B. The following investments are permissible pursuant to Section 701 of the Uniform Money Services Act, but only to the extent specified:

(1) an interest-bearing bill, note, bond or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments pursuant to this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments;

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(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission pursuant to the federal Investment Company Act of 1940 and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than ten percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding pursuant to demand-borrowing agreements pursuant to this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding pursuant to demand-borrowing agreements pursuant to this paragraph with any one person aggregating more than ten percent of the licensee's total permissible investments; and

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(4) any other investment the director designates, to the extent specified by the director.

C. The aggregate of investments pursuant to Subsection B of this section shall not exceed fifty percent of the total permissible investments of a licensee calculated in accordance with Section 701 of the Uniform Money Services Act.

Article 8

ENFORCEMENT

SECTION 801. [NEW MATERIAL] SUSPENSION AND REVOCATION--
RECEIVERSHIP.--

A. The director may suspend or revoke a license, place a licensee in receivership or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act;

(2) the licensee does not cooperate with an examination or investigation by the director;

(3) the licensee engages in fraud, intentional misrepresentation or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued pursuant to the Uniform Money Services Act, as a result of the licensee's willful misconduct or willful blindness;

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(5) the competence, experience, character or general fitness of the licensee, authorized delegate, person in control of a licensee or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations or makes a general assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the director issues and serves upon the licensee a final order, including a finding that the authorized delegate has violated the Uniform Money Services Act.

B. In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of the Uniform Money Services Act and the previous conduct of the person involved.

SECTION 802. [NEW MATERIAL] SUSPENSION AND REVOCATION OF AUTHORIZED DELEGATES.--

A. The director may issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

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(1) the authorized delegate violated the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act;

(2) the authorized delegate did not cooperate with an examination or investigation by the director;

(3) the authorized delegate engaged in fraud, intentional misrepresentation or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

B. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of the Uniform Money Services Act or a rule adopted or order issued pursuant to that act and the previous conduct of the authorized delegate.

C. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized

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delegate according to procedures prescribed by the director.

SECTION 803. [NEW MATERIAL] ORDERS TO CEASE AND DESIST.--

A. If the director determines that a violation of the Uniform Money Services Act, or of a rule adopted or an order issued pursuant to that act, by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers or the public as a result of the violation, or causes insolvency or significant dissipation of assets of the licensee, the director may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

B. The director may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the director.

C. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 801 or 802 of the Uniform Money Services Act.

D. A licensee or an authorized delegate that is served with an order to cease and desist may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding

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pursuant to Section 801 or 802 of the Uniform Money Services Act.

E. An order to cease and desist expires unless the director commences an administrative proceeding pursuant to Section 801 or 802 of the Uniform Money Services Act within ten days after it is issued.

SECTION 804. [NEW MATERIAL] CONSENT ORDERS.--The director may enter into a consent order at any time with a person to resolve a matter arising pursuant to the Uniform Money Services Act or a rule adopted or order issued pursuant to that act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act has been violated.

SECTION 805. [NEW MATERIAL] EMERGENCY ORDERS.--

A. The director may issue an emergency order, without prior notice and an opportunity for hearing, if the director finds that:

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

(a) has caused or is likely to cause the insolvency of the licensee;

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(b) has caused or is likely to cause the substantial dissipation of the licensee's assets or earnings;

(c) has seriously weakened or is likely to seriously weaken the condition of the licensee; or

(d) has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, a purchaser of the licensee's money services or the public; and

(2) immediate action is necessary to protect the interests of the licensee, a purchaser of the licensee's money services or the public.

B. In connection with and as directed by an emergency order, the director may secure the records and assets of a licensee or authorized delegate that relate to the licensee's money services business.

C. An emergency order shall:

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

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

(3) be delivered by personal delivery or sent

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by certified mail, return receipt requested, to the person against whom the order is directed at the person's last known address; and

(4) include a notice that a person may request a hearing on the order by filing a written request for a hearing with the director not later than the fifteenth day after the date the order is delivered or mailed.

D. An emergency order takes effect as soon as the order is served on the person against whom the order is directed.

E. A licensee or authorized delegate against whom an emergency order is directed must submit a written certification to the director, signed by the licensee or authorized delegate, and their principals and responsible individuals, as applicable, and each person named in the order, stating that each person has received a copy of and has read and understands the order.

F. Unless the director receives a written request for a hearing from a person against whom an emergency order is directed not later than the fifteenth day after the date the order is delivered or mailed, the order is final as to that person on the sixteenth day after the date the order is delivered or mailed.

G. A request for a hearing does not stay an emergency order.

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H. A hearing on an emergency order takes precedence over any other matter pending before the director and must be held not later than the tenth day after the date the director receives the written request for hearing unless a hearing officer extends the period for good cause or the parties agree to a later hearing date.

I. A final emergency order may be appealed to the district court as provided in Section 39-3-1.1 NMSA 1978.

SECTION 806. [NEW MATERIAL] CIVIL PENALTIES.--The director may assess a civil penalty against a person that violates the Uniform Money Services Act or a rule adopted or an order issued pursuant to that act in an amount not to exceed one thousand dollars (\$1,000) per day for each day the violation is outstanding.

SECTION 807. [NEW MATERIAL] CRIMINAL PENALTIES.--

A. A person who intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained pursuant to the Uniform Money Services Act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a fourth degree felony.

B. A person who knowingly engages in an activity for which a license is required pursuant to the Uniform Money Services Act without being licensed pursuant to that act and who receives more than two thousand five hundred dollars

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(\$2,500) in compensation within a thirty-day period from this activity is guilty of a fourth degree felony.

C. A person who knowingly engages in an activity for which a license is required pursuant to the Uniform Money Services Act without being licensed pursuant to that act and who receives two thousand five hundred dollars (\$2,500) or less in compensation within a thirty-day period from this activity is guilty of a misdemeanor.

SECTION 808. [NEW MATERIAL] UNLICENSED PERSONS.--

A. If the director has reason to believe that a person has violated or is violating Section 201, 301 or 401 of the Uniform Money Services Act, the director may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of Section 201, 301 or 401 of that act.

B. In an emergency, the director may petition the district court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

C. An order to cease and desist becomes effective upon service of it upon the person.

D. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 901 and 902 of the Uniform Money Services Act.

E. A person that is served with an order to cease

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and desist for violating Section 201, 301 or 401 of the Uniform Money Services Act may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding pursuant to Sections 901 and 902 of that act.

F. An order to cease and desist expires unless the director commences an administrative proceeding within ten days after it is issued.

Article 9

ADMINISTRATIVE PROCEDURES

SECTION 901. [NEW MATERIAL] POWERS OF DIRECTOR.--

A. The director may act on the director's own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with the Uniform Money Services Act, refer cases to the office of the attorney general or any other state agency or agency of another state or the United States and seek or provide remedies as provided in the Uniform Money Services Act.

B. The director may investigate and examine, in New Mexico or in any other state or country, by subpoena or otherwise, the activities, books, accounts and records of a person that provides or offers to provide money services, or a person to which a licensee has delegated its obligations pursuant to an agreement or the Uniform Money Services Act, to

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determine compliance with the Uniform Money Services Act. Information that identifies individuals who have agreements with the licensee shall not be disclosed to the public. In connection with the investigation, the director may:

(1) charge the person the reasonable expenses necessarily incurred to conduct the examination; and

(2) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated.

C. The director may enter into cooperative arrangements with other state agencies or agencies of another state or of the United States, or the nationwide mortgage licensing system and registry, and may exchange with any of those entities information about a licensee, including information obtained during an examination of the licensee.

D. The director may bring an action to enforce the Uniform Money Services Act in New Mexico or in any other state or country.

E. The director may recover the reasonable expenses of enforcing the Uniform Money Services Act pursuant to Article 8 of that act, including nongovernmental attorney and expert witness fees based on the hours reasonably expended and the hourly rates for attorneys and expert witnesses of comparable experience in the community.

SECTION 902. [NEW MATERIAL] HEARINGS.--Except as

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otherwise provided in Subsection C of Section 205, Subsection C of Section 304, Subsection C of Section 404 and Sections 803, 805 and 808 of the Uniform Money Services Act, the director shall not suspend or revoke a license, place a licensee in receivership, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate or assess a civil penalty without notice and an opportunity to be heard. The director shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

Article 10

MISCELLANEOUS PROVISIONS

SECTION 1001. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Money Services Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1002. [NEW MATERIAL] RULES.--The director may promulgate rules to administer and enforce the Uniform Money Services Act, including rules necessary or appropriate to:

- A. implement and clarify the Uniform Money Services Act;
- B. preserve and protect the safety and soundness of money services businesses;
- C. protect the interests of purchasers of money services and of the public;

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D. protect against drug trafficking, terrorist funding and money laundering, structuring or a related financial crime; and

E. recover the cost of administering and enforcing the Uniform Money Services Act and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations and other actions required to achieve the purposes of that act.

SECTION 1003. [NEW MATERIAL] APPOINTMENT OF SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS--FORWARDING OF PROCESS-- CONSENT TO JURISDICTION.--

A. A licensee, an authorized delegate or a person who knowingly engages in activities that are regulated by the Uniform Money Services Act and require a license, with or without filing an application or holding a license, is deemed to have:

(1) consented to the jurisdiction of the courts of this state over the licensee, authorized delegate or person for all actions arising pursuant to the Uniform Money Services Act;

(2) consented to the venue in New Mexico for all actions arising pursuant to the Uniform Money Services Act, as venue is provided pursuant to Chapter 38, Article 3 NMSA 1978, and to the convenient forum of the courts in any such venue; and

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(3) appointed the secretary of state as the lawful agent of the licensee, authorized delegate or person for the purpose of accepting service of process in all actions arising pursuant to the Uniform Money Services Act.

B. Within three business days after service of process upon the secretary of state, the secretary of state shall transmit by certified mail copies of all lawful process accepted by the secretary of state as an agent to that person at the person's last known address. Service of process shall be deemed complete three business days after the secretary of state deposits the copies of the documents in the United States mail.

C. The provisions of this section are cumulative and do not diminish the provisions of any other law that:

- (1) provide for the New Mexico courts to have jurisdiction over a person;
- (2) provide for venue in New Mexico of any action; or
- (3) provide for any other method of serving process upon a person.

SECTION 1004. [NEW MATERIAL] MONEY SERVICES REGULATORY FUND--CREATED--PURPOSE--APPROPRIATION.--

A. The "money services regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the

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regulation and licensing department. The fund shall consist of application, licensing, renewal, investigation and any other fees received that are associated with the costs of administering the Uniform Money Services Act and any money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the money services regulatory fund is ~~appropriated~~ subject to appropriation by the legislature to the financial institutions division of the regulation and licensing department to carry out the provisions of the Uniform Money Services Act.

C. Money shall be disbursed from the money services regulatory fund only on warrant of the secretary of finance and administration upon vouchers signed by the director of the financial institutions division or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SECTION 1005. TEMPORARY PROVISION--LICENSEE TRANSITION.--

The director of the financial institutions division of the regulation and licensing department shall promulgate such rules

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as are necessary to transition licensees pursuant to Section 58-20-1 NMSA 1978 to the licensing provisions of the Uniform Money Services Act.

SECTION 1006. DELAYED REPEAL.--Section 58-20-1 NMSA 1978 (being Laws 1965, Chapter 293, Section 1, as amended) is repealed effective July 1, 2017.

SECTION 1007. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2017.

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