**South Carolina General Assembly**

125th Session, 2023-2024

**S. 1031**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Cromer

Companion/Similar bill(s): 5068

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Introduced in the Senate on February 7, 2024

Introduced in the House on March 28, 2024

Last Amended on May 8, 2024

Currently residing in conference committee

Summary: Uniform Money Services Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/7/2024 Senate Introduced and read first time ([Senate Journal‑page 3](h:\sj\20240207.docx))

2/7/2024 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 3](h:\sj\20240207.docx))

2/29/2024 Senate Committee report: Favorable with amendment **Banking and Insurance** ([Senate Journal‑page 4](h:\sj\20240229.docx))

3/21/2024 Senate Committee Amendment Adopted ([Senate Journal‑page 22](h:\sj\20240321.docx))

3/21/2024 Senate Read second time ([Senate Journal‑page 22](h:\sj\20240321.docx))

3/21/2024 Senate Roll call Ayes-44 Nays-0 ([Senate Journal‑page 22](h:\sj\20240321.docx))

3/26/2024 Senate Read third time and sent to House ([Senate Journal‑page 24](h:\sj\20240326.docx))

3/28/2024 House Introduced and read first time ([House Journal‑page 14](h:\hj\20240328.docx))

3/28/2024 House Recommitted to Committee on **Labor, Commerce and Industry** ([House Journal‑page 14](h:\hj\20240328.docx))

4/24/2024 House Committee report: Favorable with amendment **Labor, Commerce and Industry** ([House Journal‑page 2](h:\hj\20240424.docx))

5/1/2024 House Amended ([House Journal‑page 207](h:\hj\20240501.docx))

5/1/2024 House Read second time ([House Journal‑page 207](h:\hj\20240501.docx))

5/1/2024 House Roll call Yeas-71 Nays-37 ([House Journal‑page 352](h:\hj\20240501.docx))

5/2/2024 House Read third time and returned to Senate with amendments ([House Journal‑page 14](h:\hj\20240502.docx))

5/8/2024 Senate House amendment amended ([Senate Journal‑page 234](h:\sj\20240508.docx))

5/8/2024 Senate Roll call Ayes-45 Nays-0 ([Senate Journal‑page 234](h:\sj\20240508.docx))

5/8/2024 Senate Returned to House with amendments ([Senate Journal‑page 231](h:\sj\20240508.docx))

5/9/2024 House Non-concurrence in Senate amendment ([House Journal‑page 60](h:\hj\20240509.docx))

5/9/2024 House Roll call Yeas-0 Nays-101 ([House Journal‑page 61](h:\hj\20240509.docx))

5/9/2024 Senate Senate insists upon amendment and conference committee appointed Malloy, Gambrell, Garrett ([Senate Journal‑page 35](h:\sj\20240509.docx))

5/9/2024 House Conference committee appointed Blackwell, Gatch, Jefferson ([House Journal‑page 153](h:\hj\20240509.docx))

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**VERSIONS OF THIS BILL**

[02/07/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1031_20240207.docx)

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[04/24/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1031_20240424.docx)

[05/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1031_20240501.docx)

[05/08/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1031_20240508.docx)

Indicates Matter Stricken

Indicates New Matter

House Amendments Amended

May 08, 2024

S. 1031

Introduced by Senator Cromer

S. Printed 05/08/24--S.

Read the first time February 07, 2024

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING CHAPTER 11 OF TITLE 35, RELATING TO ANTI‑MONEY LAUNDERING, SO AS TO INCORPORATE THE UNIFORM MONEY SERVICES ACT, TO PROTECT THE PUBLIC FROM FINANCIAL CRIME, STANDARDIZE THE TYPES OF ACTIVITIES THAT ARE SUBJECT TO LICENSING, AND MODERNIZE SAFETY AND SOUNDNESS REQUIREMENTS TO ENSURE FUNDS ARE PROTECTED IN AN ENVIRONMENT THAT SUPPORTS INNOVATIVE AND COMPETITIVE BUSINESS PRACTICES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 11, Title 35 of the S.C. Code is amended to read:

CHAPTER 11

South Carolina Anti‑Money LaunderingUniform Money Services Act

Article 1

General Provisions

Section 35‑11‑100. This chapter may be cited as the “South Carolina Anti‑Money Laundering Uniform Money Services Act”.

Section 35‑11‑105. As used in this chapter:

(1) “Acting in concert” means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(1)(2) “Applicant” means a person that files an application for a license pursuant to this act.

(2)(3) “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee.

(3) “Bank” means an institution organized under federal or state law which:

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

(b) 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, and does not engage in the business of making commercial loans.

(4) “Average daily money transmission liability” means the amount of the licensee’s outstanding money transmission obligations in this State at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under this chapter for any licensee required to do so, the given period of time must be the quarters ending March thirty‑first, June thirtieth, September thirtieth, and December thirty‑first.

(5) “Bank Secrecy Act” means the Bank Secrecy Act, 31 U.S.C. Section 5311, et seq., and its implementing regulations, as amended and recodified from time to time.

(6) “Closed loop stored value” means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(4)(7) “Commissioner” means the South Carolina Attorney General.

(5)(8)(a) “Control” means:

(a)(i) ownership of, or the power to vote, directly or indirectly, at least twenty‑five percent of a class of voting securities the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(b)(ii) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(c)(iii) 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.

(b)(i) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(ii) A person presumed to exercise a controlling influence as defined by this subitem can rebut the presumption of control if the person is a passive investor.

(c) For purposes of determining the percentage of a person controlled by any other person, the person’s interest must be aggregated with the interest of any other immediate family member, including the person’s spouse, parents, children, siblings, mothers‑ and fathers‑in‑law, sons‑ and daughters‑in‑law, brothers‑ and sisters‑in‑law, and any other person who shares such person’s home.

(6)(9) “Currency exchange” means receipt of revenues from the exchange of money of one government for money of another government.

(10) “Eligible rating” means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating modifiers such as “plus” or “minus” for S&P, or the equivalent for any other eligible rating service. Long‑term credit ratings are considered to be eligible if the rating is equal to A‑ or higher by S&P, or the equivalent from any other eligible rating service. Short‑term credit ratings are deemed eligible if the rating is equal to or higher than A‑2 or SP‑2 by S&P, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

(11) “Eligible rating service” means any Nationally Recognized Statistical Rating Organization (NRSRO) as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the Commissioner by rule or order.

(7)(12) “Executive officer” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(13) “Federally insured depository financial institution” means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.

(14) “In this State” means at a physical location within this State for a transaction requested in person. For a transaction requested electronically or by phone, the provider of the money transmission may determine if the person requesting the transaction is “in this State” by relying on other information provided by the person regarding the location of the individual’s residential address or a business entity’s principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate such location including, but not limited, to an address associated with an account.

(15) “Individual” means a natural person.

(16) “Key individual” means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(8)(17) “Licensee” means a person licensed pursuant to this act.

(18) “Material litigation” means litigation, that according to United States generally accepted accounting principles, is significant to a person’s financial health and would be required to be disclosed in the person’s annual audited financial statements, report to shareholders, or similar records.

(9)(19) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(10)(20) “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11)(21) “Money services” means money transmission or currency exchange.

(12)(22)(a) “Money transmission” means any of the following:

(i) selling or issuing payment instruments to a person located in this State,;

(ii) selling or issuing stored value to a person located in this State,; or

(iii) receiving money or monetary value for transmission in this State.

(b) The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(23) “MSB accredited state” means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(24) “Multistate licensing process” means any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.

(25) “NMLS” means the Nationwide Multistate Licensing System and Registry developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

(13)(26) “Outstanding money transmission obligation”, 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 is established and extinguished in accordance with applicable state law and means:

(a) any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or

(b) any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable abandoned property laws.

(c) For purposes of this subsection, “in the United States” includes, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country.

(27) “Passive investor” means a person that:

(a) does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(b) is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(c) does not have 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; and

(d) either:

(i) attests to subitems (a), (b), and (c), in a form and in a medium prescribed by the Commissioner; or

(ii) commits to the passivity characteristics of subitems (a), (b), and (c), in a written document.

(14)(28) “Payment instrument” means a written or electronic check, draft, money order, traveler’s check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services. stored value or any instrument that (A) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or (B) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(29) “Payroll processing services” means delivering wages or salaries on behalf of employers to employees or facilitating thepayment of payroll taxes to state and federal agencies, making payments relating to employee benefit plans, making distributions of other authorized deductions from wages or salaries, transmitting other funds on behalf of an employer in connection with transactions related to employees, an employer performing payroll processing services on its own behalf or on behalf of its affiliate, or a professional employment organization subject to regulation under other applicable state law.

(15)(30) “Person” means an individual, corporation, business trust, estate, trust, general partnership, limited partnership, limited‑liability company, association, joint venturestock corporation, government, governmental subdivision, agency or instrumentality, public corporation, or another legal or commercial entity or other corporate entity identified by the Commissioner.

(16)(31) “Record” 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.

(17)(32) “Responsible individual” means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State. “Receiving money for transmission” or “money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

(18)(33) “State” means a state, of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory, or insular possession subject to the jurisdiction of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(19)(34) “Stored value” means monetary value that is evidenced by an electronic record.representing a claim against the issuer evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes, but is not limited to, “prepaid access” as defined by 31 C.F.R. Section 1010.100, as amended or recodified from time to time. Notwithstanding the foregoing, the term “stored value” does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(35) “Tangible net worth” means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

(20)(36) “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, which creates the likelihood of material loss, insolvency, or dissipation of the licensee’s assets, or otherwise materially prejudices the interests of its customers.

Section 35‑11‑110. (A) This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality of the United Statesthereof, or its agent;

(2) money transmission by the United States Postal Service or by a contractor on behalf an agent of the United States Postal Service;

(3) a state, county, city, or another any other governmental agency or governmental subdivision or instrumentality of a state, or its agent;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section 1861‑1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. Section 611‑633 (1994 & Supp. V 1999), under the laws of a state or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate who is not such a persona federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. Section 3102, as amended or recodified from time to time, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Sections 1861‑1867, as amended or recodified from time to time, or corporation organized under the Edge Act, 12 U.S.C. Sections 611‑633, as amended or recodified from time to time;

(5) 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 of the United Statesthereof, or on behalf of a state or governmental subdivision, agency, or instrumentality of a statethereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1‑25 (1994) as amended or recodified from time to time, 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 a board of trade;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as a futures commission merchant;

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

(9)(8) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded exempted by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored‑value transactions, automated clearing house transfers, or similar funds transfers;

(10)(9) a person registered as a securities broker‑dealer under federal or state securities laws to the extent of his operation as a securities broker‑dealer; or

(11)(10) a credit union regulated and insured by the National Credit Union Association.an individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor;

(11) a person expressly appointed as a third‑party service provider to, or agent of, an entity exempt under Section 35‑11‑110 (A)(4), solely to the extent that:

(a) such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(b) the exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser’s or holder’s money or monetary value by the service provider or agent;

(12) a person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

(a) there exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee’s behalf;

(b) the payee holds the agent out to the public as accepting payments for goods or services on the payee’s behalf; and

(c) payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor’s obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;

(13) a person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender’s designated recipient, provided that the entity:

(a) is properly licensed or exempt from licensing requirements under this chapter;

(b) provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(c) bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender’s designated recipient; or

(14) a person exempt by regulation or order if the Commissioner finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this chapter.

(15) payroll processing services.

(B) The Commissioner may require that a person claiming to be exempt from licensing pursuant to this section provide information and documentation to the Commissioner demonstrating that it qualifies for any claimed exemption.

Article 2

Money Transmission Licenses

Section 35‑11‑200. (A) A person may not engage in the business of money transmission or advertise, solicit, or hold himself out as providing money transmission unless the person is:

(1) licensed under this chapter or approved to engage in money transmission pursuant to Section 35‑11‑210article;

(2) an authorized delegate of a person licensed pursuant to this article; or

(3) an authorized delegate of a person approved to engage in money transmission pursuant to Section 35‑11‑210exempted under Section 35‑11‑110.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35‑11‑205. (A) 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.

(B) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the commissionerCommissioner. Each form must contain content as set forth by regulation, order, instruction, or procedure of the Commissioner and may be changed or updated by the Commissioner in accordance with applicable law in order to carry out the purposes of this chapter and maintain consistency with NMLS licensing standards and practices. The application must state or contain:

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

(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 this State;

(4) a list of the applicant’s proposed authorized delegates and the locations in this State where the applicant and the applicant’s 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 a bankruptcy or receivership proceeding affecting the licensee or a person in control of a licensee;

(7) a sample form of contract for authorized delegates, if applicable, and;

(8) a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8)(9) the name and address of any bank federally insured depository financial institution through which the applicant's payment instruments and stored value will be paidapplicant plans to conduct money transmission; and

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

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

(C)(B) If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant also shall provide:

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

(2) if applicable, a certificate of good standing from this State and 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 a parent entity or subsidiary of the applicant, and whether a parent entity or subsidiary is publicly traded;

(4) the legal name, a 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 who has control of the applicant;

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

(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 or, if determined to be acceptable to the Commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the Commissioner;

(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 applicationcertified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;

(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, 15 U.S.C. Section 78m (1994 & Supp. V 1999)as amended or recodified from time to time;

(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, 15 U.S.C. Section 78m (1994 & Supp. V 1999)as amended or recodified from time to time; or

(b) 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 this State, the name and address of the applicant’s registered agent in this State; and

(11) other information the commissioner Commissioner reasonably requires with respect to the applicant.

(D)(C) A nonrefundable application fee of one thousand five hundred dollars and a license fee of seven hundred fiftyone thousand six hundred dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

(E)(D) The commissioner Commissioner may waive one or more requirements of subsections (B)(A) and (C)(B) or permit an applicant to submit other information in lieu of the required information.

Section 35‑11‑210. (A) A person who is licensed to engage in money transmission in at least one other state, with the approval of the commissioner and in accordance with this section, may engage in money transmission and currency exchange in this State without being licensed pursuant to Section 35‑11‑205 if the:

(1) state in which the person is licensed has enacted the Uniform Money Services Act or the commissioner determines that the money transmission laws of that state are substantially similar to those imposed by the law of this State;

(2) person submits to, and in the form required by, the commissioner:

(a) in a record, an application for approval to engage in money transmission and currency exchange in this State without being licensed pursuant to Section 35‑11‑205;

(b) a nonrefundable fee of one thousand dollars; and

(c) a certification of license history in the other state.

(B) When an application for approval pursuant this section is complete, the commissioner shall promptly notify the applicant in a record, of the date on which the request was determined to be complete and:

(1) the commissioner 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 the:

(a) request is approved; and

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

(C) A person who engages in money transmission and currency exchange in this State pursuant to this section shall comply with the requirements of, and is subject to the sanctions provided in this chapter, as if the person were licensed pursuant to Section 35‑11‑220. Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the Commissioner through NMLS the following items:

(1) the individual’s fingerprints for submission to the Federal Bureau of Investigation and the Commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years; and

(2) personal history and experience in a form and in a medium prescribed by the Commissioner, to obtain the following:

(a) an independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement must be waived;

(b) information related to any criminal convictions or pending charges; and

(c) information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(B) If the individual has resided outside of the United States at any time in the last ten years, the individual also shall provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) at a minimum, the search firm shall:

(a) demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(b) not be affiliated with or have an interest with the individual it is researching;

(2) at a minimum, the investigative background report must be written in the English language and must contain the following:

(a) if available in the individual’s current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(b) criminal records information for the past ten years including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(c) employment history;

(d) media history, including an electronic search of national and local publications, wire services, and business applications; and

(e) financial services‑related regulatory history including, but not limited to, money transmission, securities, banking, insurance, and mortgage‑related industries.

Section 35‑11‑215. (A) Except as otherwise provided in subsection (B),An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond, letter of credit, or other similar security in a form acceptable to the commissioner Commissionerin the amount of fifty thousand dollars plus ten thousand dollars for each location, not exceeding a total addition of two hundred fifty thousand dollars, must accompany an application for a license.

(B) Security must be in a form satisfactory to the commissioner and payable to the State for the benefit of a claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.The amount of the required security must be:

(1) the greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee’s average daily money transmission liability in this State calculated for the most recently completed three‑month period, up to a maximum of five hundred thousand dollars; or

(2) in the event that the licensee’s tangible net worth exceeds ten percent of total assets, the licensee shall maintain a surety bond of one hundred thousand dollars.

(C) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the commissioner may maintain an action on behalf of the claimant. A licensee that maintains a bond in the maximum amount provided for in Section 35‑11‑215(B)(1) or (2) may not be required to calculate its average daily money transmission liability for purposes of this section.

(D) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner 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 this State is reduced. The commissioner may permit a licensee to substitute another form of security acceptable to the commissioner for the security effective at the time the licensee ceases to provide money services in this State.A licensee may exceed the maximum required bond amount pursuant to Section 35‑11‑605(A)(5).

(E) In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the commissioner.

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

Section 35‑11‑220. (A) When an application for an original license is filed and considered complete pursuant to this article, the commissioner Commissioner shall investigate the applicant’s financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner Commissioner may conduct an on‑site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner Commissioner shall issue a license to an applicant pursuant to this article if the commissioner Commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Sections 35‑11‑205, 35‑11‑215, and 35‑11‑230; 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 this article is complete, the commissioner Commissioner promptly shall notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner Commissioner 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 the:

(a) application is considered approved; and

(b) commissioner Commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the one hundred twenty‑day period.

(C) The commissioner Commissioner may for good cause extend the application period.

(D) A determination by the Commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the Criminal Background Check response from the FBI, and addresses all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(E) The Commissioner shall issue a formal written notice of the denial of a license application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner Commissioner pursuant to this article section may appealrequest a hearing, within thirty days after receipt of the written notice of the denial, from the denial and request a hearing pursuant to Section 35‑11‑710.

(F) The initial license term begins on the day the application is approved. The license expires on December thirty‑first of the year in which the license term began, unless the initial license date is between November first and December thirty‑first, in which instance the initial license term runs through December thirty‑first of the following year.

Section 35‑11‑225. (A) A person licensed pursuant to this article shall pay an annual renewal fee of seven hundred fifty dollars no later than thirty days before the anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.license issued under this chapter must be renewed annually.

(1) An annual renewal fee of one thousand six hundred dollars must be paid no more than sixty days before the license expiration.

(2) The renewal term must be for a period of one year and begins on January first of each year after the initial license term and expires on December thirty‑first of the year the renewal term begins.

(B) A licensee under this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissionerCommissioner. The renewal report must 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 this State which 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 which has not been reported to the commissioner Commissioner on a required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments pursuant to the requirements set forth in Sections 35‑11‑600 and 35‑11‑605;

(5) proof that the licensee continues to maintain adequate security as required by Section 35‑11‑215; and

(6) a list of the locations in this State 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 an extension of time granted by the commissioner, the commissioner 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 commissioner sends the notice of suspension. The suspension must 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 for each day after suspension that the commissioner did not receive the renewal report and the renewal fee.

(D) The commissioner Commissioner for good cause may grant an extension of the renewal date.

(D) The Commissioner is authorized and encouraged to utilize NMLS to process license renewals provided that such functionality is consistent with this section.

Section 35‑11‑230. A person licensed pursuant to this article shall maintain a net worth of at least two hundred fifty thousand dollars determined in accordance with generally accepted accounting principles.(A) A licensee under this chapter shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one half of one percent of additional assets for over one billion dollars.

(B) Tangible net worth must be demonstrated at initial application by the applicant’s most recent audited or unaudited financial statements pursuant to Section 35‑11‑205(B)(6).

(C) Notwithstanding the foregoing provisions of this section, the Commissioner shall have the authority, for good cause shown, to exempt, in whole or in part, from the requirements of this section any applicant or licensee.

Section 35‑11‑235. (A) If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the Commissioner may suspend or revoke the licensee’s license pursuant to Section 35‑11‑700 or 35‑11‑710 or other applicable state law for such suspension or revocation.

(B) An applicant for a money transmission license must demonstrate that it meets or will meet, and a money transmission licensee must at all times meet, the requirements in Sections 35‑11‑215, 35‑11‑230 and 35‑11‑600 of this chapter.

Article 3

Currency Exchange Licenses

Section 35‑11‑300. (A) A person may not engage in currency exchange or advertise, solicit, or hold himself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person is:

(1) licensed pursuant to this chapterarticle;

(2) licensed for money transmission pursuant to Article 2, or approved to engage in money transmission pursuant to Section 35‑11‑210; or

(3) an authorized delegate of a person licensed pursuant to Article 2; or.

(4) an authorized delegate of a person approved to engage in money transmission pursuant to Section 35‑11‑210.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35‑11‑305. (A) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the commissionerCommissioner. The application shall state or contain:

(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 this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations; and

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

(5)(4) other information the commissioner Commissioner reasonably requires with respect to the applicant, but not more than the commissioner Commissioner may require pursuant to Article 2.

(B) A nonrefundable application fee of one thousand five hundred dollars and a license fee of seven hundred fiftyone thousand six hundred dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

(C) The Commissioner may waive one or more requirements of subsection (A) or permit an applicant to submit other information in lieu of the required information.

Section 35‑11‑310. (A) When a person applies for a license pursuant to this article, the commissioner Commissioner shall investigate the applicant’s financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner Commissioner may conduct an on‑site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner Commissioner shall issue a license to an applicant pursuant to this article if the commissioner Commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 35‑11‑305; 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 this article is complete, the commissioner Commissioner promptly shall notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner Commissioner 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 the:

(a) application is considered approved; and

(b) commissioner Commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the period.

(C) The commissioner Commissioner may for good cause extend the application period.

(D) The Commissioner shall issue a formal written notice of the denial of a license. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied a license by the commissioner Commissioner pursuant to this article may appealrequest a hearing, within thirty days after receipt of the written notice of the denial pursuant to Section 35‑11‑710, from the denial and request a hearing.

Section 35‑11‑315. (A) A person licensed pursuant to this article shall pay a biennial renewal fee of seven hundred fifty dollars no later than thirty days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day. All licenses issued pursuant to this article expire on December thirty‑first of each year. A person licensed pursuant to this article shall pay a renewal fee of one thousand six hundred dollars on or before December first of each year.

(B) A person licensed pursuant to this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissionerCommissioner. The renewal report must state or contain a:

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

(2) list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange, 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 an extension of time granted by the commissioner, the commissioner 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 commissioner sends the notice of suspension.

(D)(C) The commissioner Commissioner for good cause may grant an extension of the renewal date.

Article 4

Authorized Delegates

Section 35‑11‑400. (A) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(B) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. For such contracts initiated on or after the effective date of this act, the licensee shall provide to each authorized delegate information sufficient for compliance with this chapter.Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee’s authorized delegate, the licensee must:

(1) adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee’s authorized delegates comply with applicable state and federal law;

(2) enter into a written contract that complies with Section 35‑11‑400(D); and

(3) conduct a reasonable risk‑based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

(C) 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.An authorized delegate must operate in full compliance with this chapter.

(D) If a license is suspended or revoked or a licensee does not renew its license, the commissioner shall notify all authorized delegates of the licensee whose names are in a record filed with the commissioner 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. The written contract required by Section 35‑11‑400(B) must be signed by the licensee and the authorized delegate and, at a minimum, must:

(1) appoint the person signing the contract as the licensee’s authorized delegate with the authority to conduct money transmission on behalf of the licensee;

(2) set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;

(3) require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and regulations implementing this chapter, relevant provisions of the Bank Secrecy Act and the USA Patriot Act;

(4) require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;

(5) impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;

(6) require the authorized delegate to prepare and maintain records as required by this chapter or regulations implementing this chapter, or as reasonably requested by the Commissioner;

(7) acknowledge that the authorized delegate consents to examination or investigation by the Commissioner;

(8) state that the licensee is subject to regulation by the Commissioner and that, as part of that regulation, the Commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(9) acknowledge receipt of the written policies and procedures required under Section 35‑11‑400(B)(1).

(E) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage in pursuant to Article 2 of this chapter. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.If the licensee’s license is suspended, revoked, surrendered, or expired, the licensee must, within five business days, provide documentation to the Commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the Commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

(F) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.

(F)(G) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

Section 35‑11‑405. A person may not provide money services on behalf of a person not licensed pursuant to this chapter or not exempt pursuant to Section 35‑11‑110. A person that engages in that activity provides money services to the same extent as if the person were a licensee and is jointly and severally liable with the unlicensed or nonexempt person.

Article 5

Examinations, Reports, and Records

Section 35‑11‑500. (A) The commissioner Commissioner may conduct an annual examination or investigation of a licensee or of any of the licensee’s authorized delegates on a forty‑five day notice in a record to the licenseeor otherwise take independent action authorized by this chapter or by a rule or order issued under this chapter as reasonably necessary or appropriate to administer and enforce this chapter, regulations implementing this chapter, and other applicable law, including the Bank Secrecy Act and the USA Patriot Act. The Commissioner may:

(1) conduct an examination either on‑site or off‑site as the Commissioner may reasonably require;

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

(3) accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the Commissioner; and

(4) summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(B) The commissioner may examine a licensee or its authorized delegate, at any time, without notice, if the commissioner has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued pursuant to this chapter. A licensee or authorized delegate shall provide, and the Commissioner shall have full and complete access to, all records the Commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the Commissioner, provided, the Commissioner may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this section.

(C) If the commissioner Commissioner concludes that an on‑site examination is necessary pursuant to subsection (A), the licensee shall pay the reasonable cost of the examination.

(D) Information obtained during an examination pursuant to this chapter may be disclosed only as provided in Section 35‑11‑530.

Section 35‑11‑505. The commissioner may consult and cooperate with other state money services regulators in enforcing and administering this act. They jointly may pursue examinations and take other official action that they are otherwise empowered to take.(A) To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the Commissioner is authorized and encouraged to participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees that hold licenses in this State and other states. As a participant in multistate supervision, the Commissioner shall:

(1) cooperate, coordinate, and share information with other state and federal regulators in accordance with Section 35‑11‑530;

(2) enter into written cooperation, coordination, or information‑sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and

(3) cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with Section 35‑11‑530.

(B) The Commissioner may not waive, and nothing in this section constitutes a waiver of, the Commissioner’s authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter, or a rule adopted or order issued under this chapter, to enforce compliance with applicable state or federal law.

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

Section 35‑11‑510. (A) A licensee shall file with the commissioner Commissioner within fifteen business days any material changes in information provided in a licensee’s application as prescribed by the commissionerCommissioner.

(B) A licensee shall file with the commissioner within forty‑five days after the end of each fiscal quarter a current list of all authorized delegates, and locations in this State 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. Each licensee shall submit a report of authorized delegates within forty‑five days of the end of the calendar quarter. The Commissioner is authorized and encouraged to utilize NMLS for the submission of the report required by this subsection provided that such functionality is consistent with the requirements of this subsection. The authorized delegate report must include, at a minimum, each authorized delegate’s:

(1) company legal name;

(2) taxpayer employer identification number;

(3) principal provider identifier;

(4) physical address;

(5) mailing address;

(6) any business conducted in other states;

(7) any fictitious or trade name;

(8) contact person’s name, phone number, and email;

(9) start date as licensee’s authorized delegate;

(10) end date acting as licensee’s authorized delegate, if applicable; and

(11) any other information the Commissioner reasonably requires with respect to the authorized delegate.

(C) A licensee shall file a report with the commissioner Commissioner within three one business days 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 under the United States Bankruptcy Code, 11 U.S.C. Section 101‑110 (1994 & Supp. V 1999)as amended or recodified from time to time, for bankruptcy or reorganization;

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

(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;

(D) A licensee shall file a report with the Commissioner within three business days after the licensee has reason to know of the occurrence of any of the following events:

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

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

(E) Each licensee shall submit a report of condition within forty‑five days of the end of the calendar quarter, or within any extended time as the Commissioner may prescribe. The report of condition must include:

(1) financial information at the licensee level;

(2) nationwide and state‑specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(3) permissible investments report;

(4) transaction destination country reporting for money received for transmission, if applicable, which shall only be included in a report of condition submitted within forty‑five days of the end of the fourth calendar quarter; and

(5) any other information the Commissioner reasonably requires with respect to the licensee. The Commissioner is authorized and encouraged to utilize NMLS for the submission of the report required by this subsection and is authorized to change or update as necessary the requirements of this subsection to carry out the purposes of this chapter and maintain consistency with NMLS reporting.

(F) Each licensee, within ninety days after the end of each fiscal year, or within any extended time as the Commissioner may prescribe, shall file with the Commissioner:

(1) an audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles, prepared by an independent certified public accountant or independent public accountant who is satisfactory to the Commissioner, which must include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the Commissioner. If the certificate or opinion is qualified, the Commissioner may order the licensee to take any action as the Commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification; and

(2) any other information as the Commissioner may reasonably require.

Section 35‑11‑515. (A) A licensee shall:

(1) give the commissioner notice in a record of a proposed change of control within fifteen days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of one thousand dollars with the notice.

(B) After review of a request for approval pursuant to subsection (A), the commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must 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 commissioner shall approve a request for change of control pursuant to subsection (A) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person 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 this article is complete, the commissioner shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the commissioner 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 considered approved; and

(b) the commissioner shall permit the change of control under this section to take effect as of the first business day after expiration of the period.

(E) The commissioner, by rule of order, may exempt a person from any of the requirements of subsection (A)(2) and (3) if it is in the public interest to do so.

(F) Subsection (A) 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 person may request in a record a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (A) through (C).Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the Commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(B) A person, or group of persons acting in concert, seeking to acquire control of a licensee, in cooperation with the licensee, shall:

(1) submit an application in a form and in a medium prescribed by the Commissioner; and

(2) submit a nonrefundable fee of one thousand dollars with the request for approval.

(C) Upon request, the Commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the Commissioner pursuant to Section 35‑11‑515(B)(1) without using NMLS.

(D) The application required by Section 35‑11‑515(B)(1) must include information required by Section 35‑11‑210 for any new key individuals that have not previously completed the requirements of Section 35‑11‑210 for a licensee.

(E) When an application for acquisition of control under this section appears to include all the items and addresses all of the matters that are required, the application must be considered complete and the Commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the Commissioner shall approve or deny the application within sixty days after the completion date; or

(2) if the application is not approved or denied within sixty days after the completion date:

(a) the application is approved;

(b) the person, or group of persons acting in concert, are not prohibited from acquiring control; and

(c) the Commissioner may for good cause extend the application period.

(F) A determination by the Commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(G) When an application is filed and considered complete under subsection (E), the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The Commissioner shall approve an acquisition of control pursuant to this section if the Commissioner finds that all of the following conditions have been fulfilled:

(1) the requirements of subsections (B) and (D) have been met, as applicable; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(H) The Commissioner shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the Commissioner under this section may request a hearing within thirty days after receipt of the written notice of the denial pursuant to Section 35‑11‑710.

(I) The requirements of subsections (A) and (B) do not apply to any of the following:

(1) a person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) a person that acquires control of a licensee by devise or descent;

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

(4) a person that is exempt under Section 35‑11‑110(A)(4);

(5) a person that the Commissioner determines is not subject to subsection (A) based on the public interest;

(6) a public offering of securities of a licensee or a person in control of a licensee; or

(7) an internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(J) Persons in subsection (I)(2), (3), (4), (6), and (7), in cooperation with the licensee, shall notify the Commissioner within fifteen days after the acquisition of control.

(K)(1) The requirements of subsections (A) and (B) do not apply to a person that has complied with and received approval to engage in money transmission under this chapter or was identified as a person in control in a prior application filed with and approved by the Commissioner or by an MSB‑accredited state pursuant to a multistate licensing process, provided that:

(a) the person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(b) if the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by an MSB‑accredited state if such rating was given;

(c) the licensee to be acquired is projected to meet the requirements of Sections 35‑11‑215, 35‑11‑230, and 35‑11‑600 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of Sections 35‑11‑215, 35‑11‑230, and 35‑11‑600 after the acquisition of control is completed;

(d) the licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(e) the person provides notice of the acquisition in cooperation with the licensee and attests to subsection (K)(1)(a), (b), (c), and (d) in a form and in a medium prescribed by the Commissioner.

(2) If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.

(L) Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the Commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the Commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections(A) and (B).

(M)(1) A licensee adding or replacing any key individual shall:

(a) provide notice in a manner prescribed by the Commissioner within fifteen days after the effective date of the key individual’s appointment; and

(b) provide information as required by Section 35‑11‑210 within forty‑five days of the effective date.

(2) Within ninety days of the date on which the notice provided pursuant to item (1) was determined to be complete, the Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interest of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(3) A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. A licensee may request a hearing regarding a notice of disapproval, within thirty days after receipt of such notice of disapproval pursuant to Section 35‑11‑710.

(4) If the notice provided pursuant to item (1) is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.

Section 35‑11‑520. (A) A licensee shall maintain the following records for determining its compliance with this act chapter for at least three years:

(1) a record of each payment instrument or stored‑valueoutstanding money transmission 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‑valuemoney transmission obligations;

(5) records of each payment instrument and stored‑valuemoney transmission 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

(7) other records the commissioner Commissioner reasonably requires by rule.

(B) The items specified in subsection (A) may be maintained in any form of record.

(C) Records may be maintained outside this State if they are made accessible to the commissioner Commissioner on a seven business‑day notice that is sent in a record.

(D) All records maintained by the licensee as required in subsections (A) through (C) are open to inspection by the commissioner Commissioner pursuant to Section 35‑11‑500.

Section 35‑11‑525. (A) A licensee and an authorized delegate shall file with the commissioner Commissioner all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section 103 (2000)the Bank Secrecy Act and other federal and state laws pertaining to money laundering.

(B) The timely filing of a complete and accurate report required pursuant to subsection (A) with the appropriate federal agency is in compliance with the requirements of subsection (A), unless the commissioner Commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the commissionerCommissioner.

Section 35‑11‑530. (A) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection pursuant to rules promulgated by the commissioner consistent with state and federal law governing the disclosure of public information. Except as otherwise provided in subsection (B), all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the Commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under Section 30‑4‑10, et seq.

(B) Except for reasonably segregable portions of information and records that by law would routinely be made available to a party other than an agency in litigation with the commissioner, the commissioner shall not publish or make available:

(1) information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an investigation, examination, or inspection of the books and records of a person;

(2) interagency or intra‑agency memoranda or letters, including without limitation:

(a) records that reflect discussions between or consideration by the commissioner or members of the commissioner’s staff, or both, of an action taken or proposed to be taken by the commissioner or by a member of the commissioner’s staff; and

(b) reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner’s staff, prepared in the course of an:

(i) inspection of the books or records of a person whose affairs are regulated by the commissioner; or

(ii) examination, investigation, or litigation conducted by or on behalf of the commissioner;

(3) personnel files, medical files, and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy, including without limitation:

(a) information concerning all employees of the South Carolina Securities Division and all persons subject to regulation by the division; and

(b) personal information reported to the commissioner under the division's rules concerning registration about employees of applicants, licensees, or their agents;

(4)(a) investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) interfere with enforcement proceedings;

(ii) deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) disclose the identity of a confidential source;

(b) the commissioner also may withhold investigatory records that would:

(i) constitute an unwarranted invasion of personal privacy;

(ii) disclose investigative techniques and procedures; or

(iii) endanger the life or physical safety of law enforcement personnel;

(c) as used in this section, “investigatory records” includes:

(i) all documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violation by a person of a provision of the statutes or rules administered by the commissioner; and

(ii) all written communications from or to a person confidentially complaining or otherwise furnishing information about a possible violation, as well as all correspondence and memoranda in connection with the confidential complaint or information;

(5) information contained in or related to examinations, operating reports, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, check issuers, money transmitters, money services providers, or money service businesses;

(6)(a) financial records of an applicant, licensee, or the agent of an applicant or licensee obtained during or as a result of an examination by the commissioner;

(b) when a record is required to be filed pursuant to this article with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, must be public information unless sections of the information are bound separately and are marked “confidential” by the applicant, licensee, or agent upon filing;

(c) information pursuant to subitem (b) bound separately and marked “confidential” must be considered nonpublic until ten days after the commissioner has given the applicant, licensee, or agent notice that an order will be entered finding the material public information.

(d) an applicant, licensee, or agent may seek an injunction from the Richland County Circuit Court ordering the commissioner to withhold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner pursuant to subitem (c) is appealed under applicable law;

(7) trade secrets obtained from a person; or

(8) another record that is required to be closed to the public and is not considered open to public inspection under other law.The Commissioner may disclose information not otherwise subject to disclosure under subsection (A) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the Commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with Section 30‑4‑10, et seq.

(C) The commissioner may disclose information not otherwise subject to disclosure pursuant to subsection (A) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the commissioner finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the commissioner of the commissioner’s intent to release the information.

(D)(C) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

(D) Information contained in the records of the Commissioner that is not confidential and may be made available to the public either on the Commissioner’s website, upon receipt by the Commissioner of a written request, or in NMLS must include:

(1) the name, business address, telephone number, and unique identifier of a licensee;

(2) the business address of a licensee’s registered agent for service;

(3) the name, business address, and telephone number of all authorized delegates;

(4) the terms of or a copy of any bond filed by a licensee, provided that confidential information including, but not limited to, prices and fees for such bond is redacted;

(5) copies of any nonconfidential final orders of the Commissioner relating to any violation of this chapter or regulations implementing this chapter; and

(6) imposition of an administrative fine or penalty under this chapter.

Section 35‑11‑535. (A) Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

(B) If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

Section 35‑11‑540. (A) This section does not apply to:

(1) money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time; or

(2) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

(B) Every licensee shall refund to the sender within ten days of receipt of the sender’s written request for a refund of any and all money received for transmission unless any of the following occurs:

(1) the money has been forwarded within ten days of the date on which the money was received for transmission;

(2) instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;

(3) the agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section;

(4) the refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or

(5) the refund request does not enable the licensee to:

(a) identify the sender’s name and address or telephone number; or

(b) identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

Section 35‑11‑545. (A) This section does not apply to:

(1) money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time;

(2) money received for transmission that is not primarily for personal, family, or household purposes;

(3) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(4) payroll processing services.

(B) For purposes of this article, “receipt” means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.

(C) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(1) The receipt must contain the following information, as applicable:

(a) the name of the sender;

(b) the name of the designated recipient;

(c) the date of the transaction;

(d) the unique transaction or identification number;

(e) the name of the licensee, NMLS Unique ID, the licensee’s business address, and the licensee’s customer service telephone number;

(f) the amount of the transaction in United States dollars;

(g) any fee charged by the licensee to the sender for the transaction; and

(h) any taxes collected by the licensee from the sender for the transaction.

(2) The receipt required by this section shall be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically or by phone, if other than English.

Section 35‑11‑550. Every licensee or authorized delegate shall include on a receipt or disclose on the licensee’s website or mobile application the name and phone number of the South Carolina Office of Attorney General and a statement that the licensee’s customers can contact the Commissioner with complaints about the licensee’s money transmission services.

Article 6

Permissible Investments

Section 35‑11‑600. (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 store‑value obligations issued or sold in all states and money transmitted from all states by the licenseemoney transmission obligation.

(B) Except for permissible investments enumerated in Section 35‑11‑605(A), The commissionerthe Commissioner, with respect to a any licensee, may, by rule or order, limit the extent to which a type of specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investmentsif the specific investment represents undue risk to customers, not reflected in the market value of the 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‑valuemoney transmission obligations in the event of bankruptcy or receivership of the licensee insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101‑110, as amended or recodified from time to time, for bankruptcy or reorganization, 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 in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section may be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(D) Upon the establishment of a statutory trust in accordance with subsection (C) or when any funds are drawn on a letter of credit pursuant to Section 35‑11‑605(A)(4), the Commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice is deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee’s outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this State, and other states, as applicable. Any statutory trust established hereunder must be terminated upon extinguishment of all of the licensee’s outstanding money transmission obligations.

(E) The Commissioner, by regulation or by order, may allow other types of investments that the Commissioner determines are of sufficient liquidity and quality to be a permissible investment. The Commissioner is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

Section 35‑11‑605. (A) Except to the extent otherwise limited by the commissioner pursuant to Section 35‑11‑600, theThe following investments are permissible pursuant to Section 35‑11‑600:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813 (1994 & Supp. V 1999)cash , including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee’s customers in a federally insured depository financial institution, and cash equivalents including ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee‑owned locations, debit card or credit card‑funded transmission receivables owed by any bank, or money market mutual funds rated “AAA” by S&P, or the equivalent from any eligible rating service;

(2) 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 Bankcertificates of deposit or senior debt obligations of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securitiesan obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality of the United States; 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 of a state the full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the Commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by subsection (A)(4)(c).

(a) The letter of credit must:

(i) be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that bears an eligible rating or whose parent company bears an eligible rating and is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

(ii) be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

(iii) not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee; and

(iv) contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the Commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty days prior to any expiration date, that the irrevocable letter of credit will not be extended.

(b) In the event of any notice of expiration or nonextension of a letter of credit issued under subsection (A)(4)(a)(iv), the licensee is required to demonstrate to the satisfaction of the Commissioner, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with Section 35‑11‑600(A) upon the expiration of the letter of credit. If the licensee is not able to do so, the Commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee’s requirements to maintain permissible investments in accordance with Section 35‑11‑600(A). Any such draw must be offset against the licensee’s outstanding money transmission obligations. The drawn funds must be held in trust by the Commissioner or the Commissioner’s designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee’s outstanding money transmission obligations.

(c) The letter of credit must provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(i) the original letter of credit, including any amendments; and

(ii) a written statement from the beneficiary stating that any of the following events have occurred:

(A) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101‑110, as amended or recodified from time to time, for bankruptcy or reorganization;

(B) the filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

(C) the seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

(D) the beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with Section 35‑11‑600(A) upon the expiration or nonextension of the letter of credit.

(d) The Commissioner may designate an agent to serve on the Commissioner’s behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the Commissioner. The Commissioner’s agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this section are assigned to the Commissioner.

(e) The Commissioner is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit including, but not limited to, services provided by the NMLS and State Regulatory Registry, LLC; and

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts that are not past due or doubtful of collection if the aggregate amount of receivables under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this item 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 under the Investment Companies Act of 1940, 15 U.S.C. Section 80a‑1‑64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to investments specified in items (1) through (4). one hundred percent of the surety bond or deposit provided for under Section 35‑11‑215 that exceeds the average daily money transmission liability in this State.

(B) Unless permitted by the Commissioner by regulation or order to exceed the limit as set forth herein, The the following investments are permissible pursuant to Section 35‑11‑600, 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 under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this item in any one person aggregating more than ten percent of the licensee's total permissible investmentsreceivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee’s total permissible investments;

(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 under the Investment Companies Act of 1940, 15 U.S.C. Section 80a‑1‑64 (1994 & Supp. V 1999), 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 under this item 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 investmentsof the receivables permissible under item (1), receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value 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 under demand‑borrowing agreements under this item 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 under demand‑borrowing agreements under this item with any one person aggregating more than ten percent of the licensee's total permissible investmentsthe following investments are permissible up to twenty percent for each category and combined up to fifty percent of the aggregate value of the licensee’s total permissible investments:

(a) a short‑term, up to six months, investment bearing an eligible rating;

(b) commercial paper bearing an eligible rating;

(c) a bill, note, bond, or debenture bearing an eligible rating;

(d) U.S. tri‑party repurchase agreements collateralized at one hundred percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

(e) money market mutual funds rated less than “AAA” and equal to or higher than “A‑” by S&P, or the equivalent from any other eligible rating service; and

(f) a mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subsection (A)(1) through (A)(3); and

(4) another investment the commissioner designates, to the extent specified by the commissioner.cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee’s customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee’s total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

(a) has an eligible rating;

(b) is registered under the Foreign Account Tax Compliance Act;

(c) is not located in any country subject to sanctions from the Office of Foreign Asset Control; and

(d) is not located in a high‑risk or noncooperative jurisdiction as designated by the Financial Action Task Force.

(C) The aggregate of investments pursuant to subsection (B) may not exceed fifty percent of the total permissible investments of a licensee calculated pursuant to Section 35‑11‑600.

Article 7

Enforcement

Section 35‑11‑700. (A) The commissioner Commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this chapter or a rule adopted regulation or an order issued pursuant to this actchapter;

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

(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 adoptedregulation or an order issued pursuant to this chapter, as a result of the licensee’s wilful misconduct or wilful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible personkey individual 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 commissioner Commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter.; or

(9) the licensee is the subject of a final order, including a denial, suspension, or revocation, by this or any other state or federal financial services regulator, including a state or federal money services regulator, that was entered against the licensee within the past five years.

(B) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner Commissioner may consider the size and condition of the licensee’s money transmission, the magnitude of the loss, the gravity of the violation of this actchapter or a regulation or order issued pursuant to this chapter, and the previous conduct of the person involved.

(C) In determining whether to suspend or revoke a license under subsection (A)(9), the Commissioner may consider if the licensee subject to the final order is currently licensed to conduct business in the jurisdiction where the order was entered.

(D) The Commissioner shall issue a formal written notice of the suspension or revocation. The Commissioner shall set forth in the order the specific reasons for the suspension or revocation. A licensee may request a hearing within thirty days after receipt of the written notice of suspension or revocation pursuant to Section 35‑11‑710.

Section 35‑11‑705. (A) The commissioner Commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner Commissioner finds that the:

(1) authorized delegate violated this chapter or a rule adoptedregulation or an order issued pursuant to this chapter;

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

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

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

(5) 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) 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 commissioner Commissioner 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 this chapter or a rule adoptedregulation or order issued pursuant to this chapter, and the previous conduct of the authorized delegate.

(C) The Commissioner shall issue a formal written notice of the suspension or revocation. The Commissioner shall set forth in the order the specific reasons for the suspension or revocation. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissionerrequest a hearing within thirty days after receipt of the written notice of suspension or revocation pursuant to Section 35‑11‑710.

Section 35‑11‑710. (A) If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued pursuant to this chapter 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 cause insolvency or significant dissipation of assets of the licensee, the commissioner 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.If the Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation or order issued under this chapter, the Commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) 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 Commissioner; or

(3) issue an order under Sections 35‑11‑220(E), 35‑11‑235(A), 35‑11‑310(D), 35‑11‑515(H), 35‑11‑515(M), 35‑11‑700, and 35‑11‑705.

(B) The commissioner 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 commissioner. An order under subsection (A) is effective on the date of issuance. Upon issuance of the order, the Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Commissioner will seek, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Commissioner within thirty days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(C) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 35‑11‑700 or 35‑11‑705.If a hearing is requested or ordered pursuant to subsection (B), a hearing must be held. A final order may not be issued unless the Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (A).

(D) In a final order under subsection (C), the Commissioner may impose a civil penalty against a person that violates this chapter or a regulation or order issued pursuant to this chapter in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state’s costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

(E) If a petition for judicial review of a final order is not filed in accordance with Section 35‑11‑830, the Commissioner may file a certified copy of the final order with the clerk of court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(F) If a person does not comply with an order under this section, the Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars but not greater than five thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(G) A hearing in an administrative proceeding under this chapter must be conducted in public unless the Commissioner, for good cause consistent with this chapter, determines that the hearing will not be so conducted.

Section 35‑11‑715. The commissioner Commissioner may enter into a consent order at any time with a person to resolve a matter arising pursuant to this chapter or a rule adoptedregulation or order issued pursuant to this chapter. A consent order must be signed by the person to whom it is issued or by the person’s authorized representative, and must 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 this chapter or a rule adoptedregulation or an order issued pursuant to this chapter has been violated.

Section 35‑11‑720. The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued pursuant to this chapter in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees Reserved.

Section 35‑11‑725. (A) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained pursuant to this chapter, who intentionally makes a false entry or omits a material entry in that record, or violates a rule promulgated or order issued pursuant to this chapter is guilty of a Class B felony.

(B) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives more than five hundred dollars in compensation within a thirty‑day period from this activity is guilty of a Class B felony.

(C) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives no more than five hundred dollars in compensation within a thirty‑day period from this activity is guilty of a Class A misdemeanor.

Section 35‑11‑730. (A) If the commissioner Commissioner has reason to believe that a person has violated or is violating Section 35‑11‑200 or 35‑11‑300, the commissioner may issue an order to show cause why an order to cease and desist should not be issued requiring the person to cease and desist from the violation of Section 35‑11‑200 or 35‑11‑300.engaged or is about to engage in an act or practice constituting a violation of this chapter or a regulation or order issued pursuant to this chapter, the Commissioner may summarily issue an order to cease and desist pursuant to Section 35‑11‑710.

(B) In an emergency, the commissioner may petition the Richland County Circuit Court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.The Commissioner may apply to the Richland County Court of Common Pleas to:

(1) temporarily or permanently enjoin an act or practice that violates this chapter or a regulation or order issued pursuant to this chapter; or

(2) enforce compliance with this chapter or a regulation or order issued or pursuant to this chapter.

(C) An order to cease and desist becomes effective upon service of the order on the person. A person that is served with an order to cease and desist for violating Section 35‑11‑200 or 35‑11‑300 may petition the Richland County Court of Common Pleas 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 Section 35‑11‑710.

(D) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 35‑11‑800 and 35‑11‑805.

Section 35‑11‑735. (A) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner Commissioner that a licensee is in an unsafe or unsound condition, the commissioner Commissioner may apply to the Richland County Circuit Court of Common Pleas or to the circuit court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in an amount that appears necessary to protect claimants of the licensee.

(B) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take an action with respect to employees, agents, or representatives of the licensee or other action that may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise the powers and duties that are necessary and consistent with the laws of this State applicable to the appointment of receivers.

(C) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

Section 35‑11‑740. (A)(1) A person who, knowing that the property involved in a financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of unlawful activity, conducts or attempts to conduct such a financial transaction that in fact involves the proceeds:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, sources, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve‑month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve‑month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve‑month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars, or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(2) A person who transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to or through a place outside the United States or to a place in South Carolina from or through a place outside the United States:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of unlawful activity and knowing that the transportation is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve‑month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve‑month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve‑month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(3) A person with the intent:

(a) to promote the carrying on of unlawful activity; or

(b) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of unlawful activity, conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of unlawful activity, or property used to conduct or facilitate unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve‑month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve‑month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve‑month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars or quintuple the value of the financial transactions, whichever is greater.

For purposes of this subitem, the term “represented” means a representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state official authorized to investigate or prosecute violations of this section.

(B) A person who conducts or attempts to conduct a transaction described in subsection (A)(1), or transportation described in subsection (A)(2), is liable to the State for a civil penalty of not more than the greater of:

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) ten thousand dollars.

A court may issue a pretrial restraining order or take another action necessary to ensure that a bank account or other property held by the defendant in the United States is available to satisfy a civil penalty under this section.

(C) As used in this section:

(1) the term “conducts” includes initiating, concluding, or participating in initiating or concluding a transaction;

(2) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of a stock, bond, certificate of deposit, or other monetary instrument, or another payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(3) the term “financial transaction” means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments;

(4) the term “monetary instruments” means coin or currency of the United States or of another country, travelers’ checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in that form that title to it passes upon delivery, and negotiable instruments in bearer form or otherwise in that form that title to it passes upon delivery;

(5) the term “financial institution” has the definition given that term in Section 5312(a)(2), Title 31, United States Code, and the regulations promulgated thereunder.

(D) Nothing in this section supersedes a provision of law imposing criminal penalties or affording civil remedies in addition to those provided for in this section, and nothing in this section precludes reliance in the appropriate case upon the provisions set forth in Section 44‑53‑475.

Section 35‑11‑745. (A) The Commissioner may:

(1) conduct public or private investigations within or outside of this State which the Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a regulation or order issued pursuant to this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a regulation or order issued pursuant to this chapter if the Commissioner determines it is necessary or appropriate in the public interest.

(B) For the purpose of an investigation under this chapter, the Commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Commissioner considers relevant or material to the investigation.

(C) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the Commissioner under this chapter, the Commissioner may apply to the Richland County Court of Common Pleas or a court of another state to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the Commissioner;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief;

(6) impose a civil penalty of not less than five hundred dollars and not greater than five thousand dollars for each violation; and

(7) grant any other necessary or appropriate relief.

(D) This section does not preclude a person from applying to the Richland County Court of Common Pleas for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

Article 8

Administrative Procedures

Section 35‑11‑800. All administrative proceedings pursuant to this chapter must be conducted in accordance with Article 3, Chapter 23, Title 1. In order to carry out the purposes of this chapter, the Commissioner may, subject to the provisions of Section 35‑11‑530:

(1) enter into agreements or relationships with other governmental officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under this chapter;

(2) use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this chapter;

(3) accept, from other state or federal governmental agencies or officials, licensing, examination, or investigation reports made by such other state or federal governmental agencies or officials; and

(4) accept audit reports made by an independent certified public accountant or other qualified third‑party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

Section 35‑11‑805. Except as otherwise provided in Sections 35‑11‑225(C), 35‑11‑315(C), 35‑11‑710, and 35‑11‑730, the commissionerThe Commissioner may not suspend or revoke a license, 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 pursuant to Section 35‑11‑710. The commissioner Commissioner also shall hold a hearing when requested to do so by an applicant whose application for a license is denied.

Section 35‑11‑810. This chapter is administered by the commissioner Commissioner who may employ such additional assistants as he deems necessary. The commissioner Commissioner may delegate any or all of his duties pursuant to this chapter to members of his staff, as he deems necessary or appropriate.

Section 35‑11‑815. The commissioner may promulgate and amend regulations or issue orders necessary to carry out the purposes of this chapter in order to provide for the protection of the public and to assist licensees in interpreting and complying with this chapter.

Section 35‑11‑820. The Commissioner may establish reasonable fees for filings required or permitted by regulation or order adopted pursuant to this chapter, and other miscellaneous filings for which no fees are otherwise specified by law.

Section 35‑11‑825. The Commissioner may retain all fees, assessments, and fines received under this chapter for the administration of this chapter.

Section 35‑11‑830. A person aggrieved by a final order of the Commissioner may obtain a review of the order in the Richland County Court of Common Pleas by filing in the court, within thirty days after entry of the order, a written petition praying that the order may be modified or set aside in whole or in part. The aggrieved person, upon filing a petition, may move before the court in which the petition is filed to stay the effectiveness of the Commissioner’s final order until such time as the court has reviewed the order. If the court orders a stay, the aggrieved person must post any bond set by the court in which a petition is filed. A copy of the petition must be served upon the Commissioner, and the Commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the Commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

Article 9

Miscellaneous Provisions

Section 35‑11‑900. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 35‑11‑905. (A) A person licensed in this State to engage in the business of money transmission may not be subject to the amended provisions of this chapter, to the extent that they conflict with the prior law or establish new requirements not imposed under the prior law, until the first January first after the effective date of this chapter.

(B) Notwithstanding subsection (A), a licensee only must be required to amend its authorized delegate contracts for contracts entered into or amended after the effective date of the amendments to this chapter or the completion of any transition period contemplated under subsection (A). Nothing herein may be construed as limiting an authorized delegate’s obligations to operate in full compliance with this chapter as required by Section 35‑11‑400(C).

SECTION 2. Section 39-73-10(1) of the S.C. Code is amended to read:

(1) “Administrator” means the South Carolina Secretary of State Attorney General.

SECTION 3. Section 39-73-40(D) of the S.C. Code is amended to read:

(D) The administrator, by order, may deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under item (2) of subsection (A) if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants, or employees, a person occupying a similar status or performing similar functions, or a person who directly or indirectly controls or is controlled by the seller, or his affiliates or subsidiaries:

(1) has filed a notice of intention under subsection (C) with the administrator or the designee of the administrator which was incomplete in material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) within the last ten years, has pled guilty or nolo contendere to, or been convicted of a crime indicating a lack of fitness to engage in the investment commodity business;

(3) has been enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing conduct or a practice which injunction indicates a lack of fitness to engage in the investment commodities business;

(4) is the subject of an order of the administrator denying, suspending, or revoking the person's license as a securities broker-dealer, agent, sales representative, or investment advisor, or investment advisor representative;

(5) is the subject of one or more of the following orders which currently are effective and which were issued within the last five years:

(a) an order by a securities agency or an administrator of another state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, agent, sales representative, or investment adviser, or investment adviser representative, or the substantial equivalent of the foregoing;

(b) suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;

(c) a United States Postal Service fraud order;

(d) a cease and desist order entered after notice and opportunity of hearing by the administrator or a securities agency or an administrator of another state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission;

(e) an order entered by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act~~.~~;

(6) has engaged in an unethical or a dishonest act or practice in the investment commodities or securities business; or

(7) has failed reasonably to supervise sales representatives or employees.

SECTION 4. Section 39-73-60 of the S.C. Code is amended to read:

Section 39-73-60. No person, directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to Sections 39-73-20, 39-73-310, or 39-73-40(A)(2) or (4), may:

(1) cheat or defraud or attempt to cheat or defraud a person or employ a device, a scheme, or an artifice to defraud a person;

(2) make a false report, enter a false record, or make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(3) engage in a transaction, an act, a practice, or a course of business, including without limitation a form of advertising or solicitation which operates or would operate as a fraud or deceit upon a person; or

(4) misappropriate or convert the funds, security, or property of a person.

SECTION 5. Section 39-73-80 of the S.C. Code is amended to read:

Section 39-73-80. Nothing in this chapter impairs, derogates, or otherwise, affects the authority or powers of the administrator South Carolina Attorney General under state securities law or the application of this chapter to a person or transaction subject to state securities law.

SECTION 6. Section 39-73-315 of the S.C. Code is amended to read:

Section 39-73-315. (A) If the administrator believes, whether or not based upon an investigation conducted under Section 39-73-310, determines that a person has engaged, is engaging, or is about to engage in an act, or a practice, or course of business constituting a violation of this chapter or a related regulationrule adopted or order issued under this chapter, the administrator may:

(1) issue aan order directing the person to cease and desist order from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with the chapter;

(2) issue an order imposing a civil penalty of not more than ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(3) initiate the actions specified in Section 39-73-320 subsection (B).

(B) The administrator may institute one or more of the following actions in the appropriate courts of this State or in the appropriate courts of another state in addition to legal or equitable remedies otherwise available:

(1) a declaratory judgment;

(2) an action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a regulation or order of the administrator;

(3) an action for disgorgement;

(4) an action for appointment of a receiver or conservator for the defendant or the defendant's assets.An order issued pursuant to subsection (A) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, which may include a civil penalty or any costs of the investigation if a civil penalty or costs were sought, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(C) If a hearing is requested or ordered pursuant to subsection (B), a hearing must be held. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (A).

(D) In a final order under subsection (C), the administrator may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation.

(E) In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(F) If a petition for judicial review of a final order is not filed in accordance with this chapter, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(G) If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars but not greater than five thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(H) All orders issued under this section are public documents subject to the Freedom of Information Act and must be published on the Attorney General's website searchable by the name of the parties involved.

SECTION 7. Section 39-73-320 of the S.C. Code is amended to read:

Section 39-73-320. (A)(1) Upon a proper showing by the administrator that a person has violated or is about to violate this chapter or a regulation or order of the administrator, the court may grant appropriate legal or equitable remedies.

(2) Upon a showing of a violation of this chapter or a regulation or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) imposition of a civil penalty of not more than ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(b) disgorgement;

(c) declaratory judgment;

(d) restitution to investors wishing restitution;

(e) appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate this chapter or a regulation or order of the administrator is limited to:

(a) temporary restraining order;

(b) temporary or permanent injunction;

(c) writ of prohibition or mandamus; or

(d) order appointing a receiver or conservator for the defendant or the defendant's assets.If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the Richland County Court of Common Pleas to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(B) The court may not require the administrator to post a bond in an official action under this chapter. In an action pursuant to this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which might include:

(a) an asset freeze, accounting, writ or attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant’s assets;

(b) ordering the administrator to take charge and control of a defendant’s property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(c) imposing a civil penalty in an amount not to exceed ten thousand dollars for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the or a rule adopted or order issued under this chapter; and

(d) ordering the payment of prejudgment and post-judgment interest; or

(3) order such other relief as the court considers appropriate.

(C) The administrator may not be required to post a bond in an action or proceeding under this chapter.

(D)(1) Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a regulation or order of the administrator or securities or commodity agency of that state, the court may grant appropriate legal and equitable remedies.

(2) Upon showing of a violation of the securities or commodity act of the foreign state or a regulation or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) disgorgement;

(b) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

(3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a regulation or order of the administrator or securities or commodity agency of the foreign state is limited to:

(a) temporary restraining order;

(b) temporary or permanent injunction;

(c) writ or prohibition or mandamus; or

(d) order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

SECTION 8. Section 39-73-325 of the S.C. Code is amended to read:

Section 39-73-325. (A) A person who wilfully violates this chapter or a regulation or order of the administrator under this chapter, upon conviction, must be fined not more than twenty thousand dollars, or imprisoned not more than ten years, or both, for each violation.

(B) A person convicted of violating this chapter or a regulation or order under this chapter may be fined but must not be imprisoned if the person proves he had no knowledge of the rule or order.

(C) The administrator may refer evidence available concerning violations of this chapter or a regulation or order of the administrator to the appropriate division of the Attorney General’s office or the appropriate solicitor or other appropriate prosecution, law enforcement, or licensing authorities who, with or without a reference from the administrator, may institute the appropriate criminal proceedings under this chapter.

SECTION 9. Section 39-73-330 of the S.C. Code is amended to read:

Section 39-73-330. (A) This chapter must be administered by the South Carolina Secretary of StateAttorney General.

(B) The administrator and his employees may not use information filed with or obtained by the administrator which is not public information for personal gain or benefit and may not conduct securities or commodity dealings based upon the information, even though public, if there has not been sufficient time for the securities or commodity markets to assimilate the information.

(C)(1) Except as provided in item (2), all information collected, assembled, or maintained by the administrator is public information and is available for examination by the public.

(2) The following information is confidential and an exception to item (1):

(a) information obtained in private investigations pursuant to Section 39-73-310;

(b) information made confidential by the Freedom of Information Act;

(c) information obtained from federal agencies which must not be disclosed under federal law.

(3) The administrator in his discretion may disclose information made confidential under subsection (C)(2)(a) to persons identified in Section 39-73-335(A).

(4) This chapter does not create or derogate a privilege which exists at common law, by statute, or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or his employees.

SECTION 10. Section 39-73-340(A) of the S.C. Code is amended to read:

(A) In addition to specific authority granted elsewhere in this chapter, the administrator may make, amend, or rescind regulations, forms, and orders as are necessary to carry out this chapter. The regulations or forms must include, but are not limited to, regulations defining terms, whether or not used in this chapter. The definitions must not be inconsistent with this chapter. For the purpose of regulations or forms the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

SECTION 11. Section 39-73-350 of the S.C. Code is amended to read:

Section 39-73-350. (A) Sections 39-73-20, 39-73-50, and 39-73-60 apply to persons who:

(1) sell or offer to sell when an offer to:

(a) sell is made in this State; or

(b) buy is made and accepted in this State;

(2) buy or offer to buy when an offer to:

(a) buy is made in this State; or

(b) sell is made and accepted in this State.

(B) For the purpose of this section, an offer to sell or buy is made in this State, whether or not either party is then present in this State, when the offer:

(1) originates from this State; or

(2) is directed by the offeror to this State and received at the place to which it is directed, or at a post office in this State for a mailed offer.

(C) For the purpose of this section, an offer to buy or sell is accepted in this State when acceptance:

(1) is communicated to the offeror in this State; or

(2) previously has not been communicated to the offeror, orally or in writing, outside this State, and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State, reasonably believing the offeror to be in this State and it is received at the place to which it is directed or at a post office in this State for a mailed acceptance.

(D) An offer to sell or to buy is not made in this State when one or both of the following exist:

(1) Tthe publisher circulates or there is circulated on his behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this State or which is published in this State but has had more than two-thirds of its circulation outside this State during the past twelve months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication, is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

(1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

(3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

(2) A radio or television program originating outside this State is received in this State.

SECTION 12. Section 39-73-360 of the S.C. Code is amended to read:

Section 39-73-360. (A) A person aggrieved by a final order of the administrator may obtain a review of the order in the Richland County Court of Common Pleas by filing in the court, within thirty days after entry of the order, a written petition praying that the order may be modified or set aside, in whole or in part. The aggrieved person, upon filing a petition, may move before the court in which the petition is filed to stay the effectiveness of the administrator’s final order until such time as the court has reviewed the order. If the court orders a stay, the aggrieved person must post any bond set by the court in which a petition is filed. A copy of the petition must be served upon the administrator, and the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the administrator regarding the facts, if supported by competent, material, and substantial evidence, are conclusive.of the administrator may obtain a review of the order in court by filing, within sixty days after the entry of the order, a written petition requesting the order be modified or set aside in whole or in part. A copy of the petition for review must be served upon the administrator.

(B) Upon the filing of a petition for review, except where the taking of additional evidence is ordered by the court pursuant to subsection (E) or (F), the court shall have exclusive jurisdiction of the matter, and the administrator may not modify or set aside the order, in whole or in part.

(C) The filing of a petition for review under subsection (A), unless specifically ordered by the court, does not operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(D) Upon receipt of the petition for review, the administrator shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under Section 39-73-355(D), the administrator shall certify and file in court the summary order and evidence of its source upon the parties to it and an affidavit certifying that no hearing has been held and the order became final pursuant to Section 39-73-355(D).

(E) If the aggrieved party or the administrator applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator or other good cause, the court may order the additional evidence to be taken by the administrator under conditions the court considers proper.

(F) If new evidence is ordered taken by the court, the administrator may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence with modified or new findings or order.

(G) The court shall review the petition based upon the original record before the administrator as amended under subsections (E) and (F). The findings of the administrator as to the facts, if supported by competent, material, and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

(H) The judgment of the court is subject to review by the court.

SECTION 13. Section 39-73-370 of the S.C. Code is amended to read:

Section 39-73-370. It is a defense in a complaint, information, indictment, a writ, or a proceeding brought under this chapter alleging a violation of Section 39-73-20 based solely on the failure in an individual case to make physical delivery within the applicable time under Section 39-73-10(5) or Section 39-73-40(A)(2) if:

(1) failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, persons occupying a similar status or performing similar functions, persons who directly or indirectly control or are controlled by the seller, or the seller's affiliates, subsidiaries, or successors; or

(2) physical delivery was completed within a reasonable time under the applicable circumstances.

SECTION 14. Chapter 73, Title 39 of the S.C. Code is amended by adding:

Section 39-73-375. The Office of the Attorney General may retain the first seven hundred fifty thousand dollars in fines and penalties received in a fiscal year in settlement of litigation enforcement actions and reimbursements of expenses arising from violations under this chapter to offset investigative, prosecutorial, and administrative costs of enforcing this chapter, after which any excess fines and penalties received in a fiscal year must be deposited into the general fund. The Attorney General shall issue an annual report to the President of the Senate, the Speaker of the House, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Labor, Commerce and Industry Committee, and the Chairman of the House Labor, Commerce and Industry Committee. This report shall include the total amount of civil penalties collected by the Attorney General’s Office for violations of the Commodities Code, the amount of restitution and disgorgement ordered to be paid for violations of the Commodities Code, the amount of fines and penalties retained by the Attorney General’s Office pursuant to this section, and the amount of excess fines and penalties that were deposited into the general fund pursuant to this section.

SECTION 15. Chapter 73, Title 39 of the S.C. Code is amended by adding:

Article 4

Severability Clause

Section 39-73-400. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 16. Section 39-73-355 of the S.C. Code is repealed.

SECTION 17. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 18. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 19. This act takes effect upon approval by the Governor.

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