

SALE OF CHECKS AND MONEY TRANSMISSION ACT
TITLE 6, CHAPTER 13

§ 1031. Citation

This Chapter may be cited as "The Sale of Checks and Money Transmission Act."

§1032. Definitions

For the purposes of this Chapter:

(1) "Agent" means a person designated by the licensee under the provisions of this Chapter to sell or issue payment instruments or engage in the business of money transmission on behalf of a licensee.

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

(3) "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money.

(4) "Commissioner" means the commissioner of financial institutions.

(5) "Control" means ownership of or the power to directly or indirectly vote twenty-five percent or more of the outstanding voting interests of a licensee or applicant and includes an individual whose ownership is through one or more legal entities.

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

(7) "Deliver" means to deliver a check to the first person who, in payment for same, makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

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

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

(10) "Licensee" means a person duly licensed by the commissioner of financial institutions pursuant to this Chapter.

(11) "Location" means a place at which activity regulated by this Chapter occurs.

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

(13) "Money transmission" means to engage in the business of the sale or issuance of payment instruments or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including but not limited to wire, facsimile, or electronic transfer. The term includes:

(a) Selling or issuing stored value or payment instruments including checks, money orders, and traveler's checks.

(b) Receiving money or monetary value for transmission including by payment instrument, wire, facsimile, electronic transfer, or Automated Clearing House (ACH) debit.

(c) Providing third-party bill paying services.

(14) "Outstanding" means:

(a) With respect to a payment instrument or stored value, a payment instrument or stored value, issued and sold in the United States directly by the licensee or sold by an agent of the licensee in the United States and reported to the licensee, that has not yet been paid by or for the licensee.

(b) With respect to a transmission, a money transmission for which the licensee, directly or through an agent of the licensee, has received money or monetary value from the customer for transmission but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer or refunded the money or monetary value to the customer.

(15) "Payment instrument" means any electronic or written check, draft, money order, traveler's check, or other electronic or written instrument or order for the transmission or payment of money or monetary value, sold or issued to one or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer of goods or services.

(16) "Person" means an individual or legal entity.

(17) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller or by the purchaser or remitter or some other person.

(18) "Principal" means:

(a) With respect to a sole proprietorship, an owner.

(b) With respect to a legal entity other than a sole proprietorship, an executive officer, director, general partner, trustee, or manager, as applicable.

(19) "Sell" means to sell, to issue, or to deliver a check.

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

(a) Loaded with points, miles, or other nonmonetary value.

(b) Not sold to the public but distributed as a reward or charitable donation.

§1033. License required

A. No person, except those specified in R.S. 6:1034, shall engage in the business of money transmission or selling checks as a service or for a fee or other consideration without having first obtained a license pursuant to this Chapter.

B. The license granted shall be for the period commencing on April fifteenth and ending on April fourteenth of the year following the year of initial licensure or renewal of a previously issued license, as the case may be. The license fee for the year of initial licensure shall not be prorated based on the number of months the license will be in effect.

C. The office of financial institutions shall deposit the license fee check within two business days after it is received, anything to the contrary in R.S. 49:308 or 950 et seq. notwithstanding, whether or not the application is accompanied by all supporting documents required by law to be furnished as a prerequisite to licensure. However, the act of depositing the license fee shall not be construed as the granting of a license if the commissioner determines that the applicant has not met the requirements of this Chapter.

§1034. Exemption from licensing

The following persons shall not be required to be licensed under this Chapter:

(1) The United States or an instrumentality of the United States government, including the United States Postal Service or a contractor acting on behalf of the United States Postal Service.

(2) A state or an agency, political subdivision, or other instrumentality of a state.

(3) A federally insured depository financial institution that is organized under the laws of this state, another state, or the United States.

(4) A wholly owned subsidiary of a federally insured depository institution that is organized under the laws of this state, another state, or the United States.

(5) A foreign bank branch or agency in the United States established under the federal International Banking Act of 1978, 12 U.S.C. 3101 et seq.

(6) A person acting as an agent for an entity excluded under Paragraphs (3) and (4) of this Section, to the extent of the person's actions in that capacity provided that:

(a) The entity is liable for satisfying the money services obligation owed to the purchaser on the person's receipt of the purchaser's money.

(b) The entity and person enter into a written contract that appoints the person as the entity's agent and the person acts only within the scope of authority conferred by the contract.

(7) A person that, on behalf of the United States or a department, agency or instrumentality of the United States, or a state, parish, city, or any other governmental agency or political subdivision of this state, provides electronic funds transfer services of governmental benefits for a federal, state, parish, or local governmental agency.

(8) A person that acts as an intermediary on behalf of and at the discretion of a licensee in the process by which the licensee, after receiving money or monetary value from a purchaser, either directly or through an agent, transmits the money or monetary value to the purchaser's designated recipient, provided that the licensee is liable for satisfying the obligation owed to the purchaser.

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

(10) A person engaged in the business of currency transportation who is both a registered motor carrier and a licensed armored car company or courier company, provided that the person does not engage in the money transmission business without a license under this Chapter.

(11) A licensed lender using stored value cards or debit cards or electronic cash for loan disbursement under the Louisiana Consumer Credit Law.

(12) Any other person approved by the commissioner on a finding that the licensing of the person is not necessary to achieve the purposes of this Chapter.

§1035. Qualifications

To qualify for a license hereunder, an applicant shall meet the following requirements:

(1) If application is made for a new license, the applicant shall submit a business plan which includes, at a minimum, anticipated volume for the calendar year, as well as the anticipated number of transmission or selling locations. The commissioner shall determine the required bond for each new licensee, based on the information provided by the applicant; however, in no event shall the bond be less than twenty-five thousand dollars.

(2) To qualify for a new license to transmit money or sell checks or for renewal of a previously issued license, an applicant shall also have a net worth of at least one hundred thousand dollars, computed according to generally accepted accounting principles.

(3) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as to reasonably warrant the commissioner to believe that the applicant's business will be conducted honestly, carefully, and efficiently. To the extent that the commissioner deems advisable, he may investigate and consider the qualifications of officers and directors of an applicant in determining whether the applicant qualifies.

§1036. Applications

Each application for a license to transmit money or sell checks shall be made under oath on a form supplied by the commissioner. The application shall state the full name and street address of:

(1) The proprietor, if the applicant is an individual.

- (2) Every member, if the applicant is a partnership or association.
- (3) The corporation and each officer and director of a corporate applicant.

§1037. Accompanying fee; statement and bonds

A. Each application for license, including applications for renewal, to transmit money or sell checks shall be accompanied by:

(1) An investigation fee of three hundred dollars plus an additional fee of twenty-five dollars for each location in the state from which the applicant intends to transmit money or sell checks, up to a maximum of three thousand dollars, which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

(2) Financial statements certified to as correct by an owner, principal, officer, or director of the applicant for the preceding three calendar or fiscal years and the year in which the application is submitted.

(3) A surety bond by a bonding company or insurance company authorized to do business in Louisiana in the minimum amount of twenty-five thousand dollars, or a higher amount deemed appropriate by the commissioner, based on the applicant's business plan, for the initial year of licensure.

B. The bond required by licensees whose license is being renewed shall be one-half of the checks outstanding, or one percent of annual volume of money transmitted rounded to the nearest thousand, as shown on the annual report of the licensee. However, in no event shall the bond be less than twenty-five thousand dollars or exceed five hundred thousand dollars, except the commissioner may require an additional amount over the five hundred thousand dollars, up to a total maximum amount of one million dollars, after a hearing, based on the licensee's financial condition. The bond for the second and subsequent years of licensing shall be furnished within thirty days from the date the annual report is due.

C. The bond shall be in a form satisfactory to the commissioner and shall run to the office of financial institutions, for the use and benefit of the office of financial institutions and creditors of the licensee or agent for any liability incurred on any money transferred or check issued by the licensee or agent. Persons who have claims against the licensee or his agents may bring suit directly on the bond. The attorney general may bring suit on the bond on behalf of claimants, either in one action or successive actions. The surety shall have the right to cancel the bond upon giving thirty days notice, in writing, to the commissioner. The surety on the bond shall be relieved of liability for any breach of conditions occurring after the cancellation.

D. In lieu of such corporate surety bond or of any portion required by this Section, the applicant may deposit with the commissioner, or in escrow with a federally insured Louisiana depository institution, either state or federally chartered, as such applicant may designate and the commissioner may approve, cash or securities of not less than the amount of the required corporate surety bond, or any portion of it, based upon the principal amount or market value, whichever is lower, consisting of one or more of the following exclusively enumerated unencumbered items:

- (1) Cash.
- (2) Certificates of deposit.
- (3) Interest bearing stocks and bonds acceptable to the commissioner.

(4) Notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, guaranteed by either the United States, the state of Louisiana, a city, parish, town, village, school district, or other political subdivision of this state which has been authorized by the constitution, statute, or ordinance to levy and collect taxes.

E. The cash or securities authorized by Subsection D shall be placed in escrow in a federally insured Louisiana depository institution, either state or federally chartered, as provided for in Subsection D, to secure the same obligations as would the corporate surety bond. The licensee shall be entitled to receive all interest

and dividends on the cash or securities placed in escrow. In addition, the depositor shall have the right, subject to the approval of the commissioner, to substitute other securities of the kind or type enumerated in Subsection D for those previously deposited.

F. The depositor shall be required to substitute other or additional cash or securities of the kind or type enumerated in Subsection D when required to do so by written order of the commissioner for good cause shown.

G.(1) In addition to the bonding requirements of this Section, the licensee shall at all times own and have on hand permissible investments in an amount equal to the aggregate face amount of all outstanding checks sold in the United States or amount of money held over twenty-four hours prior to transmission, for which the licensee is liable for payment.

(2) In this Subsection, "permissible investments" means:

(a) Cash.

(b) Notes, debentures, or other obligations of the United States or an agency or instrumentality thereof, guaranteed by either the United States, any state, any city, parish, county, town, village, school district, or other political subdivision of any state, which has been authorized by the constitution, statute, or ordinance to levy and collect taxes.

(c) Any other investments approved by the commissioner.

(3) To prevent unsafe and unsound practices with respect to the required permissible investments, the commissioner may adopt and enforce reasonable rules to implement this Subsection.

§1038. Investigation; granting of license

A. The commissioner shall provide a detailed form which each applicant shall mail, by certified mail, to the commissioner. The commissioner shall, upon receiving the official, completed application which is accompanied by the fee and documents required by R.S. 6:1031 et seq., investigate to ascertain whether the applicant meets the qualifications established by R.S. 6:1031 et seq., for persons to engage in the business of money transmission or selling checks in this state.

B. If the commissioner determines that the applicant meets the requirements of this Chapter, he shall issue the applicant a license to engage in the business of money transmission or selling checks in this state.

§1038.1. Temporary license; expiration; extension

A. The commissioner may issue a temporary license to a person that is engaging in money transmission, but has not obtained a license under this Chapter, if the person:

(1) Certifies in writing that the person qualifies for the license and will submit a completed license application not later than the thirtieth day after the date the temporary license is issued.

(2) Submits a current financial statement acceptable to the commissioner that reflects the minimum net worth required under R.S. 6:1035.

(3) Provides security that meets the requirements of R.S. 6:1037.

(4) Agrees in writing that, until a permanent license is issued, the person will engage only in activities being conducted at existing locations.

(5) Pays the application fee and a nonrefundable temporary license fee in the amount established by regulation.

B. The effective period for a temporary license shall not exceed ninety days from the date the license is issued; however, the commissioner may extend the period for not more than an additional thirty days if necessary to complete the processing of a timely filed application for which approval is likely. Upon the expiration of the temporary license, including an extension provided for in this Subsection, the temporary licensee shall immediately cease money transmission services. No appeal, either administrative or judicial,

shall be available to the temporary licensee to extend the term of the temporary license when the term, including an extension, has expired.

§1039. Maintenance of bond

After a license is granted, the licensee shall maintain its bond in the amount prescribed by R.S. 6:1037. If the commissioner determines at any time that the bond is insecure or deficient in amount, he shall by written order require the filing of a new or supplemental bond; however, such determination and bond requirement shall not be unreasonable, arbitrary, or capricious. If the order is not complied with within thirty days following service by certified mail upon the licensee, the commissioner shall suspend the authority of the licensee to transmit money or sell checks in Louisiana and shall commence proceedings to revoke the license.

§1040. Annual renewal fee; delinquency charge

A. Each licensee shall pay to the commissioner, on or before April fifteenth of each year, a renewal license fee of three hundred dollars, plus an additional fee of twenty-five dollars for each licensed transmission or selling location in this state; however, the total renewal fee for any license shall not exceed three thousand dollars, regardless of the number of locations.

B. If the renewal fee is received after April fifteenth, a late penalty equal to one-half of the renewal fee, including the fee for each transmission or selling location, shall be paid as a prerequisite for renewal even though the three thousand dollar maximum is exceeded.

C. If payment is made by mail, proof of payment before the delinquency date may be established by sending the renewal fee by certified mail, return receipt requested. A postmark of no later than April fifteenth shall be conclusive proof that timely payment was made.

D. The office of financial institutions shall deposit the license fee check within two business days after it is received, anything to the contrary in R.S. 49:308 or 950 et seq. notwithstanding, whether or not the application is accompanied by all supporting documents required by law to be furnished as a prerequisite to renewal of the license. However, the act of depositing the license fee shall not be construed as granting of a renewal of the license previously issued if the commissioner determines that the applicant has not met the requirements of this Chapter.

§1041. Agents and subagents

A. A licensee may conduct his business at one or more locations within this state, as follows:

(1) The business may be conducted through or by means of such agents and subagents as the licensee may from time to time designate or appoint.

(2) No license under this Chapter shall be required of any agent or subagent of a licensee.

B. No licensee shall be required to obtain more than one license under this Chapter regardless of the number of locations within the state at which money is transmitted or checks are sold.

§1042. Liability of licensees

Each licensee shall be liable for the payment of all checks which he sells or money he is obligated to transmit, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state; and a licensee who sells a check or transmits money, whether directly or through an agent, upon which he is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if he had signed same as the drawer thereof.

§1043. Disclosure of responsibility

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

§1044. Visitation and examination; revocation of license

A. The commissioner either in person or through an employee appointed by him, shall visit and examine each licensee or agent on a recurring schedule or at any time whenever, in his judgment, an examination is necessary and expedient. The commissioner may accept an annual report and audit of the affairs of a licensee or agent under this Chapter if it is made by a commissioner of financial institutions or comparable officer of another state, the District of Columbia, or a territory of the United States.

B. The commissioner shall revoke or suspend a license on any ground on which he may refuse to grant a license or for a violation of any provisions of this Chapter.

§1045. Hearings

No license shall be denied or revoked except after a hearing thereon. The commissioner shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing. The notice shall be by registered or certified mail addressed to the principal place of business of such applicant or licensee. Any order of the commissioner denying or revoking such license shall state the grounds upon which it is based and shall not be effective until twenty days after written notice thereof has been sent by registered or certified mail to the applicant or licensee at such principal place of business.

§1046. Penalties

A. Any person who directly or through another violates or attempts to violate any provision of this Chapter shall be guilty of a misdemeanor, and shall be fined not less than two hundred and fifty dollars but not more than five hundred dollars, or imprisoned in the parish jail for not more than six months, or both. Each transaction in violation of this Chapter and each day that a violation continues shall be a separate offense.

B. A conviction or plea of guilty, or a finding of guilt after a plea of nolo contendere, shall automatically constitute a revocation of the primary license and all location licenses.

§1047. Reports

Each licensee shall file an annual report with the commissioner by March thirty-first for the previous year of money transmission or check-selling operations. The report shall contain:

- (1) A complete disclosure of all business activity which it conducted during the previous year in this state.
- (2) A financial statement certified by an owner, principal, director, or officer of the licensee.
- (3) A list of each location in this state at which money was transmitted or checks were sold by the licensee and its agents during the preceding calendar year.

§1048. Trust imposed on sales or transmission proceeds

Agents of licensees shall hold in trust from the moment of receipt the proceeds of a sale or delivery of the licensees' checks or money collected for transmittal. An agent may not commingle the proceeds with his own property or funds, except to use the funds in the ordinary course of its business for the purpose of making change. If any agent of a licensee commingles any proceeds received from the sale of checks issued or money transmitted by the licensee with any other funds or property owned or controlled by the agent, all

commingled proceeds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee from the sale of checks or money transmitted less the amount due the agent from the sale or transmission. In the event that a licensee's license is revoked by the commissioner pursuant to R.S. 6:1039, all proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the commissioner.

§1049. List of financial institutions

When a license is suspended and revoked, the licensee shall supply the commissioner with a list of the financial institutions where he has transacted such business as is governed by the provisions of this Chapter.

§1050. Retention of surety bond

The commissioner shall retain the surety bond required by this Chapter until the list required by R.S. 6:1049 has been supplied and thirty days have passed since the financial institution or institutions have been notified in accordance with R.S. 6:1051.

§1051. Notification of financial institutions; violations; penalties

A. When a license is suspended and revoked, the commissioner shall notify the financial institution or institutions of the former licensee that the person is no longer authorized to transmit money or sell checks under the provisions of this Chapter.

B. After such notification, no financial institution shall participate in a transaction with a former or suspended licensee in contravention of the provisions of this Chapter; however, a financial institution may accept deposits of funds into an account of a former or suspended licensee if such account does not have adequate funds to honor all outstanding checks as the term "check" is defined by R.S. 6:1032(1).

C. The commissioner may assess and collect a civil money penalty against a financial institution in an amount not exceeding two hundred and fifty dollars for each transaction in violation of the provisions of this Section.

D. Nothing in this Section shall prevent a financial institution from engaging in a transaction with a former licensee who applies for, receives, and retains a new license in accordance with the provisions of this Chapter.

§1052. Account; verification of license; cancellation; overdrafts

A. Before any financial institution opens an account for a seller of checks or person who transmits money, which is intended to cover demands made by receivers of checks or money transmitted, it shall require the licensee seeking to open the account to present the license required by R.S. 6:1033, provided that the financial institution has actual knowledge that the person opening the account intends to engage in the sale of checks or money transmission. After being presented the license and before opening such account, the financial institution shall, within seventy-two hours, verify with the commissioner that the license is valid.

B. If the licensee closes any such account, the financial institution shall, within seventy-two hours, notify the commissioner of such closure.

C. If the licensee incurs overdrafts of at least one thousand dollars for a period of five consecutive days, and there is no agreed line of credit with the financial institution to cover these overdrafts, the financial institution shall, within seventy-two hours, notify the commissioner of the amount of such overdrafts.

§1053. Significant developments; licensee's duty to report to commissioner

A. It shall be the duty of a licensee to report to the commissioner, by certified mail, the following significant developments within fifteen days of the occurrence:

- (1) Filing a petition under either Chapter 7 or Chapter 11 of the United States Bankruptcy Code.
- (2) The commencement of any license suspension or revocation proceeding, either administrative or judicial, by any state, the District of Columbia, or any United States territory in which the licensee has been issued a license to transmit money or sell checks.
- (3) The indictment of an individual licensee, a partner if the licensee is a partnership, association, or, if the licensee is a corporation, the indictment of an officer or director.
- (4) The conviction, guilty plea, or plea of nolo contendere, if the court adjudicates the nolo contendere pleader guilty, of an individual licensee, a partner if the licensee is a partnership, association, or, if the licensee is a corporation, the conviction, guilty plea, or adjudication of guilt of an officer or director.

B. Failure of the licensee to report any significant development enumerated in this Section shall constitute grounds for revocation of the license.

§1054. Change of control; notice; application; advisory opinion

A. The provisions of this Section apply to any change of control of a licensee.

B. A person shall not directly or indirectly acquire control of a licensee or a person in control of a licensee without the prior written approval of the commissioner, except as provided by this Section.

C. A licensee or proposed person in control shall:

- (1) Give the commissioner written notice of a proposed change of control at least forty-five days before the date the proposed transaction is to be consummated.
- (2) Request approval of the proposed change of control.
- (3) Submit a nonrefundable fee in an amount established by the commissioner's regulation.

D. A proposed person in control is subject to the same standards and qualifications that apply to a principal of an applicant for a new license under this Chapter. The commissioner may require the licensee or proposed person in control to provide the same type of information, documentation, and certifications and may conduct the same type of investigation the commissioner requires and conducts in connection with a new license application.

E. The commissioner shall approve a proposed change of control if he determines that the proposed person in control has the financial responsibility, financial condition, business experience, competence, character, and general fitness to warrant the belief that the business of the licensee will be conducted in compliance with this Chapter, regulations adopted under this Chapter, and other applicable state and federal law and that the change of control will not jeopardize the public interest.

F. If the commissioner determines that the proposed person in control fails to meet the qualifications, standards, and requirements of this Chapter, he shall inform the licensee and the proposed person in control in writing that the request is denied and state the reasons for the denial. Such denial may be grounds for revocation of the license under R.S. 6:1044. The licensee or the proposed person in control may appeal the denial by filing a written request for a hearing with the commissioner not later than the thirtieth day after the date the notice is mailed. A hearing on the denial must be held not later than the forty-fifth day after the date the commissioner receives the written request.

G. The provisions of Subsections B and C of this Section shall not apply to the following:

- (1) A person that acts as proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or controlling person.
- (2) A person that acquires control as a personal representative, custodian, curator, tutor, guardian, conservator, or trustee or as an officer appointed by a court or by operation of law.
- (3) A person exempted in the public interest by the commissioner's regulation or order.

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

H. A person that acquires control of a licensee by inheritance or bequest or through a purchase of securities through a public offering is exempt from the prior notice requirements of Paragraph (C)(1) of this Section, but the licensee must notify the commissioner not later than the fifteenth day after the effective date of a change of control under either of these circumstances. The licensee shall meet all requirements enumerated in Subsections C through F of this Section.

I. Before filing an application for approval of a proposed change of control, a licensee may submit a written request for an advisory opinion from the commissioner to determine whether a person would be considered a proposed person in control of the licensee and whether the requirements of this Section apply to the proposed transaction. The request shall correctly and fully represent the facts relevant to the person and the proposed transaction. If the commissioner determines that the person would not be a person in control of the licensee for purposes of this Section, he shall render a written advisory opinion that this Section does not apply to the proposed person in control or transaction.

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