

HOUSE No. 293

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the regulation of the business of domestic and foreign money transmission by the Division of Banks.

PETITION OF:

NAME:

Peter J. Koutoujian

DISTRICT/ADDRESS:

10th Middlesex

HOUSE No. 293

By Mr. Koutoujian of Waltham, a petition (accompanied by bill, House, No. 293) of Peter J. Koutoujian relative to the regulation of the business of domestic and foreign money transmission by the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4760 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the regulation of the business of domestic and foreign money transmission by the Division of Banks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 167F of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by striking out section 4, and inserting in place thereof the
3 following section:--

4 Section 4. Any bank, or state-chartered credit union or any federally-chartered bank may
5 engage directly in the business of selling, issuing or registering checks or money orders, except
6 that any bank, state-chartered credit union or any federally-chartered bank may engage in such
7 business through agents who shall not be deemed to be branches of such banks, state-chartered
8 credit unions or federally-chartered banks.

9

10 SECTION 2. The General Laws are hereby amended by striking out chapter 169, as
11 appearing in the 2006 Official Edition, and inserting in place thereof the following chapter:--

12 Chapter 169

13 Licensing and Supervision of Money Transmitters

14 Section 1: Definitions

15 “Authorized agent,” a person designated by a licensee under the provisions of this chapter
16 to sell or issue payment instruments or engage in the business of transmitting money on behalf of
17 a licensee at a location in the Commonwealth.

18 “Commissioner,” the commissioner of banks.

19 “Control,” ownership of, or the power to vote, ten percent or more of the outstanding
20 voting securities of a licensee or controlling person. For the purposes of determining the
21 percentage of a licensee controlled by any person, there shall be aggregated with the person’s
22 interest the interest of any other person controlled by such person or by any spouse, parent, or
23 child of such person.

24 “Controlling person,” any person in control of a licensee.

25 “Electronic Instrument,” a card or other tangible object for the transmission or payment
26 of money which contains a microprocessor chip, magnetic stripe, or other means for the storage
27 of information, that is prefunded and for which the value is decremented upon each use, but does
28 not include a card or other tangible object that is redeemable by the issuer in the issuer’s goods
29 or services.

30 “Licensee,” a person licensed under this Chapter to engage in the business of money
31 transmission.

32 “Material litigation,” any litigation that, according to generally accepted accounting
33 principles, is deemed significant to an applicant’s or licensee’s financial health and would be
34 required to be referenced in that entity’s annual audited financial statements, report to
35 shareholders or similar documents.

36 “Money transmission,” the sale or issuance of payment instruments or stored value or
37 engaging in the business of receiving money for transmission or transmitting money within the
38 United States or to countries other than the United States by any and all means, including but not
39 limited to payment instrument, wire, facsimile or electronic transfer.

40 “Multi-state licensing system”, a system involving 1 or more states, the District of
41 Columbia, or the Commonwealth of Puerto Rico for the sharing of regulatory information and
42 the licensing and application processes, by electronic or other means, for the business of money
43 transmission.

44 “Outstanding payment instrument,” any payment instrument issued by the licensee which
45 has been sold in the United States directly by the licensee or any payment instrument issued by
46 the licensee which has been sold by an authorized agent of the licensee in the United States,
47 which has been reported to the licensee as having been sold and which has not yet been paid by
48 or for the licensee.

49 “Payment instrument,” any electronic or written check, draft, money order, travelers
50 check or other electronic or written instrument or order for the transmission or payment of
51 money, sold or issued to one or more persons, whether or not such instrument is negotiable. The

52 term “payment instrument” does not include any credit card voucher, any letter of credit or any
53 instrument which is redeemable by the issuer in goods or services.

54 “Permissible Investments”

55 (a) Except to the extent otherwise limited by the commissioner pursuant to section
56 17, the following are permissible investments:

57 cash, a certificate of deposit, or senior debt obligation of an insured depository institution,
58 as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813 (1994 &
59 Supp. V. 1999)];

60 banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by
61 a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve
62 Bank;

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

65 an investment security that is an obligation of the United States or a department, agency,
66 or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal
67 and interest by the United States; or an investment in an obligation of a State or a governmental
68 subdivision, agency, or instrumentality thereof;

69 receivables that are payable to a licensee from its authorized agents, in the ordinary
70 course of business, pursuant to contracts which are not past due or doubtful of collection if the
71 aggregate amount of receivables under this paragraph does not exceed 20 percent of the total
72 permissible investments of a licensee and the licensee does not hold at one time receivables

73 under this paragraph in any one person aggregating more than 10 percent of the licensee's total
74 permissible investments; and;

75 a share or a certificate issued by an open-end management investment company that is
76 registered with the United States Securities and Exchange Commission under the Investment
77 Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose
78 portfolio is restricted by the management company's investment policy to investments specified
79 in paragraphs (1) through (4).

80 (b) The following investments are permissible, but only to the extent specified:

81 an interest-bearing bill, note, bond, or debenture of a person whose equity shares are
82 traded on a national securities exchange or on a national over-the-counter market, if the
83 aggregate of investments under this paragraph does not exceed 20 percent of the total permissible
84 investments of a licensee and the licensee does not at one time hold investments under this
85 paragraph in any one person aggregating more than 10 percent of the licensee's total permissible
86 investments;

87 a share of a person traded on a national securities exchange or a national over-the-counter
88 market or a share or a certificate issued by an open-end management investment company that is
89 registered with the United States Securities and Exchange Commission under the Investment
90 Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose
91 portfolio is restricted by the management company's investment policy to shares of a person
92 traded on a national securities exchange or a national over-the-counter market, if the aggregate of
93 investments under this paragraph does not exceed 20 percent of the total permissible investments

94 of a licensee and the licensee does not at one time hold investments in any one person
95 aggregating more than 10 percent of the licensee's total permissible investments;
96 a demand-borrowing agreement made to a corporation or a subsidiary of a corporation
97 whose securities are traded on a national securities exchange if the aggregate of the amount of
98 principal and interest outstanding under demand-borrowing agreements under this paragraph
99 does not exceed 20 percent of the total permissible investments of a licensee and the licensee
100 does not at one time hold principal and interest outstanding under demand-borrowing agreements
101 under this paragraph with any one person aggregating more than 10 percent of the licensee's total
102 permissible investments; and
103 any other investment the commissioner designates, to the extent specified by the
104 commissioner.

105 (c) The aggregate of investments under subsection (b) may not exceed 50 percent of the
106 total permissible investments of a licensee calculated in accordance with section 17.

107 "Person," any individual, partnership, association, joint-stock association, trust, limited
108 liability company, limited liability partnership or corporation.

109 "Primary business," the principal business of the licensee as determined by the
110 commissioner, exclusive of any business conducted as an agent of the state lottery commission.

111 "Principal shareholder," any person or group of persons acting in concert who is the
112 owner of ten percent or more of any voting class of an applicant's stock.

113 “Remit,” either to make direct payment of money to a licensee or its representatives
114 authorized to receive the money, or to deposit money in a bank, credit union or savings and loan
115 association or other similar financial institution in an account specified by the licensee.

116 “Stored value,” monetary value that is evidenced by an electronic record.

117 Section 2. No person or entity shall engage in the business of money transmission
118 without first obtaining a license from the commissioner pursuant to this chapter. If a licensee
119 intends to carry on a business at more than one location, including through an authorized agent,
120 such licensee shall procure a license for each location where such business shall be conducted.

121 Section 3. Nothing in this chapter shall be construed to apply to:

122 the United States or a department, agency, or instrumentality thereof;

123 money transmission by the United States Postal Service or by a contractor on behalf of
124 the United States Postal Service;

125 a State or a governmental subdivision, agency, or instrumentality thereof;

126 a bank, as defined in section one of chapter one hundred and sixty-seven, a federally-
127 chartered bank as defined in section one of chapter 167F, a bank holding company, an office of
128 an international banking corporation, a branch of a foreign bank, a corporation organized
129 pursuant to the Bank Services Act, or a corporation organized under the Edge Act under the laws
130 of a State or the United States if the person does not issue, sell, or provide payment instruments
131 or stored value through an authorized agent that is not such a person;

132 electronic funds transfer of governmental benefits for a federal, state, or governmental
133 agency by a contractor on behalf of the United States or a department, agency, or instrumentality
134 thereof, or a State or governmental subdivision, agency, or instrumentality thereof;

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

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

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

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

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

149 Section 4. The commissioner may adopt, amend, or repeal rules and regulations, which
150 may include an adequate capitalization requirement for entities engaged in the business of money
151 transmission to aid in the administration and enforcement of this chapter.

152 Section 5. The application for a license shall be in a form prescribed by the
153 commissioner and shall contain the name and address or addresses where the business of the
154 applicant is located and if the applicant is a partnership, association, corporation, or other form of
155 business organization, the names and addresses of each member, director, principal officer
156 thereof, and any individual acting as a manager of an office location. Such application shall also
157 include a description of the activities of the applicant, in such detail and for such periods as the
158 commissioner may require, as well as such further information as the commissioner may
159 require. The commissioner may require a background investigation of each applicant for a
160 license to engage in the business of money transmission by means of fingerprint checks by the
161 criminal history systems board pursuant to section 172 of chapter 6, and the Federal Bureau of
162 Investigation for state and national criminal history record checks. If the applicant is a
163 partnership, association, corporation or other form of business organization, the commissioner
164 may require such background investigation by means of fingerprint checks on each member,
165 director, principal officer of such applicant, and any individual acting as a manager of an office
166 location. Receipt of criminal history record information by a private entity shall be
167 prohibited. Each application for a license shall be accompanied by an investigation
168 fee. Investigation and license fees shall be determined annually by the commissioner of
169 administration under section 3B of chapter 7. If a licensee intends to carry on a business at more
170 than one location, including authorized agents, such licensee shall procure a license for each
171 location where such business shall be conducted.

172 Upon the filing of an application for a license, if the commissioner finds that the financial
173 responsibility, character, reputation, integrity and general fitness of the applicant, and of the
174 partners or members thereof if the applicant is a partnership or association, and of the officers,

175 directors and principal employees if the applicant is a corporation, are such as to warrant belief
176 that the business will be operated honestly, fairly, soundly and efficiently in the public interest
177 consistent with the purposes of this chapter, he shall thereupon issue the applicant a license to
178 engage in the business of money transmission. If the commissioner shall not so find or, (a) the
179 applicant made a false statement of a material fact in the application for a license; (b) an officer,
180 director or member of the applicant business, including a proposed authorized agent, has, within
181 ten years prior to the filing of the application, been (i) convicted of or pleaded nolo contendere to
182 a felony, or (ii) committed an act involving fraud or deceit, which act is substantially related to
183 the qualifications, functions or duties of a person engaged in the business of money transmission;
184 (c) the applicant violated any of the provisions of this chapter or regulations promulgated
185 hereunder, any similar regulatory scheme of another jurisdiction, or any other law applicable to
186 the conduct of the business sought to be licensed; (d) a licensee or authorized agent of a licensee
187 located at the address at which the applicant intends to operate his business has had any license
188 issued by the commissioner suspended or revoked within six months of the date of the new
189 application; he shall not issue a license and he shall notify the applicant of the denial. Within
190 twenty days thereafter, he shall enter upon his records a written decision and findings containing
191 the reasons supporting the denial and shall forthwith give written notice thereof by registered
192 mail to the applicant. Within thirty days after the date of such notice, the applicant may appeal
193 from such denial to the superior court for Suffolk county, sitting in equity. The court shall hear
194 all pertinent evidence and determine the facts and upon the facts as so determined, review said
195 denial and, as justice and equity may require, affirm the same or order the commissioner to issue
196 such license.

197 The commissioner may participate in a multi-state licensing system for entities engaged
198 in the business of money transmission. The commissioner may establish requirements for
199 participation by an applicant in a multi-state licensing system which may vary from the
200 provisions set out in section 5 and section 6. The applicant shall pay directly to such multi-state
201 licensing system any additional fee relating to participation in such multi-state licensing system.

202 Section 6. Each license shall state the address at which the business is to be conducted
203 and, if an authorized agent, the appropriate identification thereof, and shall state fully the name
204 of the licensee. Immediately upon receipt, the licensee or authorized agent shall cause a copy of
205 such license to be conspicuously displayed in the place of business of the licensee or the
206 authorized agent. Such copies for authorized agents may be obtained at a reasonable cost, as
207 determined by the commissioner.

208 Such license shall not be transferable or assignable and shall expire annually at such time
209 as determined by the commissioner. The closing of the place of business of the licensee at the
210 address stated on the license, including an authorized agent, shall require written notification to
211 the Commissioner within 5 business days after the closing of the location. A change of location
212 of the licensee at the address stated on the license, including an authorized agent, shall require
213 prior written notification to the Commissioner 15 business days before the relocation.

214 If there shall be any change among the officers, partners or directors of any licensee or
215 authorized agent, the licensee shall forthwith notify the commissioner of the name, address and
216 occupation of each new officer, partner, director, or authorized agent and provide such other
217 information as the commissioner may require.

218 Section 7. All money received for transmission by any licensee shall be forwarded to the
219 person to whom the same is directed within seven days following receipt thereof. Receipts
220 given for deposits of money received for transmission shall contain all appropriate information
221 relative to the transaction.

222 Section 8. The commissioner may suspend or revoke a license issued pursuant to this
223 chapter if he finds that:

224 (a) the licensee or an authorized agent has violated a provision of this chapter or any rule
225 or regulation adopted hereunder or any other law applicable to the conduct of its business; or

226 (b) a fact or condition exists which, if it had existed at the time of the original application
227 for such license, would have warranted said commissioner in refusing to issue such license.

228 Except as provided in subsection (b) of section nine , no license shall be revoked or
229 suspended except after notice and hearing pursuant to chapter thirty A.

230 A licensee may surrender a license by delivering to the commissioner written notice that
231 it hereby surrenders such license, but such surrender shall not affect the civil or criminal liability
232 of such licensee for acts committed before such surrender.

233 No revocation, suspension or surrender of a license shall impair or affect the obligation of
234 any preexisting lawful contract between the licensee, either directly or through an authorized
235 agent, and any person.

236 In lieu of suspension or revocation of a license issued hereunder, the commissioner may
237 fine a licensee up to a maximum of five hundred dollars per day for each violation.

238 Section 9. (a) If the commissioner determines, after giving notice of and opportunity for a
239 hearing, that a licensee has engaged in or is about to engage in an act or practice constituting a
240 violation of a provision of this chapter or a rule, regulation or order adopted hereunder, said
241 commissioner may order such licensee to cease and desist from such unlawful act or practice and
242 take such affirmative action as in his judgment will effect the purposes of this chapter.

243 (b) If the commissioner makes written findings of fact that the public interest will be
244 irreparably harmed by a delay in issuing an order under subsection (a) he may issue a temporary
245 cease and desist order. Upon the entry of a temporary cease and desist order, the commissioner
246 shall promptly notify, in writing, the licensee affected thereby that such order has been so
247 entered, the reasons therefor, and that within twenty days after the receipt of a written request for
248 a hearing from such licensee, the matter will be scheduled for such hearing to determine whether
249 or not such temporary order shall become permanent and final. If no such hearing is requested
250 and none is ordered by the commissioner, the order shall remain in effect until it is modified or
251 vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after giving
252 notice of and opportunity for a hearing to the licensee subject to such order, shall, by written
253 finding of facts and conclusions of law, vacate, modify or issue a permanent cease and desist
254 order.

255 (c) No order under this section, except an order issued pursuant to subsection (b), may be
256 entered without prior notice and opportunity for a hearing. The commissioner may vacate or
257 modify an order under this section upon a finding that the conditions which required such order
258 have changed and that it is in the public interest to vacate or modify such order.

259 An order issued pursuant to this section shall be subject to review as provided in chapter
260 thirty A.

261 Section 10. A licensee shall, when directed by the commissioner, permit the
262 commissioner or his duly authorized representative to inspect its records and evidence of
263 compliance with this chapter or any rule and regulation issued thereunder and with any other
264 law, rule and regulation applicable to the conduct of its business. The commissioner shall
265 preserve a full record of each such examination of a licensee including a statement of its
266 condition. All records of investigations and reports of examinations by the commissioner,
267 including workpapers, information derived from such reports or responses to such reports, and
268 any copies thereof in the possession of any licensee under the supervision of the commissioner,
269 shall be confidential and privileged communications, shall not be subject to subpoena and shall
270 not be a public record under clause twenty-sixth of section 7 of chapter 4. For the purpose of this
271 paragraph, records of investigation and reports of examinations shall include records of
272 investigation and reports of examinations conducted by a financial regulatory agency of the
273 federal government and any other state, and of any foreign government which are considered
274 confidential by such agency or foreign government and which are in possession of the
275 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
276 record protecting the confidentiality of any such record, and other than any such record on file
277 with the court or filed in connection with the court proceeding, and the court may exclude the
278 public from any portion of a proceeding at which any such record may be disclosed. Copies of
279 such reports of examination shall be furnished to a licensee for its use only and shall not be
280 exhibited to any other person, organization or agency without prior written approval by the
281 commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the

282 federal government, of other states, or of foreign countries, and any law enforcement agency,
283 such information, reports, inspections and statements relating to the licensees under his
284 supervision.

285 The commissioner, or his examiners or such others of his assistants as he may designate,
286 may summon the directors, officers or agents of a licensee, or any other witnesses, and examine
287 them relative to the affairs, transactions and condition of the licensee, and, for that purpose, may
288 administer oaths. Whoever, without justifiable cause, refuses to appear and testify when so
289 required or obstructs the person making such examination in the performance of his duty, shall
290 be punished by a fine of not more than one thousand dollars or by imprisonment for not more
291 than one year.

292 Section 11. The commissioner, if he has reason to believe that a person other than a
293 licensee has violated any of the provisions of this chapter, shall be authorized to make such
294 investigations as he shall deem necessary and may examine such other person and shall compel
295 the production of all relevant books, records, accounts and documents.

296 Section 12. Each licensee shall annually, on or before a date to be determined by the
297 commissioner, file a report with the commissioner containing such information as said
298 commissioner may require concerning the business and operations during the preceding calendar
299 year. A licensee neglecting to file such report or failing to amend the same within fifteen days of
300 notice from said commissioner directing the same shall, unless such neglect or failure is due to
301 justifiable cause and not due to willful neglect, pay to the commonwealth fifty dollars for each
302 day during which such neglect or failure continues.

303 A licensee shall keep and use such business records in such form and at such location as
304 said commissioner shall, by regulation, determine, which shall enable said commissioner to
305 determine whether such licensee is complying with the provisions of this chapter and any rules
306 or regulations promulgated hereunder by said commissioner and any other law, rule or regulation
307 applicable to the conduct of the business for which it is licensed under this chapter. Such
308 regulations may contain provisions for the suspension or revocation of licenses for violations
309 hereof and for such records to be recorded, copied or reproduced by photographic, photostatic,
310 microfilm, microcard, miniature photographic, electronic, including, but not limited to, optical
311 imaging, or other process which accurately reproduces or forms a durable medium for
312 reproducing the original record or document or in any other form or manner authorized by the
313 commissioner; provided, however, that nothing in this section shall be construed to permit any
314 such licensee to destroy original records or documents. Each such licensee shall preserve all
315 such business records for as long a period as the commissioner shall prescribe by regulation.
316 Notwithstanding the provisions of any general or special law or the Massachusetts Rules of Civil
317 Procedure to the contrary, service of a subpoena for business records upon a licensee, delivered
318 to an office of such licensee located within the commonwealth shall be deemed to have been
319 served at the location, whether within or outside the commonwealth, where the original business
320 records or documents are kept or maintained.

321 Section 13. The commissioner or an aggrieved party may enforce the provisions of this
322 chapter, or restrain any violations thereof, by filing a civil action in a court of competent
323 jurisdiction. A violation of this chapter or a rule or regulation adopted hereunder, shall constitute
324 a violation of chapter ninety-three A.

325 Section 14. Whoever violates any provision of this chapter or any rule or regulation
326 made thereunder by the commissioner shall be punished by a fine of not more than five thousand
327 dollars or by imprisonment in state prison for not more than five years, or both. Each day a
328 violation continues shall be deemed a separate offense. The penalty provision of this section
329 shall be in addition to, and not in lieu of, any other provision of law applicable to a licensee or
330 other person for violating section two or any rule or regulation made thereunder.

331 Section 15. (a) Whenever the commissioner finds that any licensee or exempt person
332 under section two of this chapter has violated any provision of this chapter or any rule or
333 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct
334 of the business of money transmission, the commissioner may, by order, in addition to any other
335 action authorized under this chapter or any rule or regulation made thereunder, impose a penalty
336 upon such person which shall not exceed five thousand dollars for each violation, up to a
337 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
338 commissioner may impose a penalty which shall not exceed five thousand dollars for each
339 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
340 licensee or exempt person under section two of this chapter, plus the costs of investigation.

341 (b) Nothing in this section shall limit the right of any individual or entity who has been
342 injured as a result of any violation of this chapter by a licensee, or any person other than a
343 licensee or exempt person under section two of this chapter, to bring an action to recover
344 damages or restitution in a court of competent jurisdiction.

345 (c) Any findings or order issued by the commissioner pursuant to this section shall be
346 subject to review as provided in chapter thirty A.

347 Section 16. (a) Whenever the commissioner determines that any person has, directly or
348 indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
349 applicable to the conduct of the business of money transmission, or any order issued by the
350 commissioner under this chapter or any written agreement entered between such licensee and the
351 commissioner, the commissioner may serve upon such person a written notice of intention:

352 (1) to prohibit such person from performing in the capacity of a principal employee on
353 behalf of any licensee for such period of time that the commissioner deems necessary;

354 (2) to prohibit the person from applying for or obtaining a license from the commissioner
355 for a period up to thirty-six months following the effective date of an order issued under
356 subsection (b) or (c); or

357 (3) to prohibit such person from any further participation, in any manner, in the conduct
358 of the business of money transmission in Massachusetts or to prohibit such person from being
359 employed by, an authorized agent of, or operating on behalf of a licensee under this chapter or
360 any other business which requires a license from the commissioner.

361 A written notice issued under subsection (a) shall contain a written statement of the facts
362 that support the prohibition and shall give notice of an opportunity for a hearing to be held
363 thereon. Such hearing shall be fixed for a date not more than thirty days after the date of service
364 upon the commissioner of such request for a hearing. If such person fails to submit a request for
365 a hearing within twenty days of service of notice under subsection (a), or otherwise fails to
366 appear in person or by a duly authorized representative, such party shall be deemed to have
367 consented to the issuance of an order of such prohibition in accordance with the notice.

368 In the event of such consent under subsection (b), or if after a hearing the commissioner
369 finds that any of the grounds specified in such notice have been established, the commissioner
370 may issue an order of prohibition in accordance with subsection (a) as the commissioner finds
371 appropriate.

372 An order issued under subsection (b) or (c) shall be effective upon service upon the
373 person. The commissioner shall also serve a copy of the order upon the licensee of which the
374 person is an employee or on whose behalf the person is performing. The order shall remain in
375 effect and enforceable until it is modified, terminated, suspended, or set aside by the
376 commissioner or a court of competent jurisdiction.

377 Except as consented to in writing by the commissioner, any person who, pursuant to an
378 order issued under subsection (b) or (c), has been prohibited from participating in whole or in
379 part in the conduct of the business of money transmission in Massachusetts may not, while such
380 order is in effect, continue or commence to perform in the capacity of a principal employee, or
381 otherwise participate in any manner, if so prohibited by order of the commissioner, in the
382 conduct of the affairs of:

383 any licensee under this chapter;

384 any other business which requires a license from the commissioner; or

385 any bank, as defined under section one of chapter one hundred sixty seven, or any
386 subsidiary thereof.

387 Section 17. (a) Except as otherwise provided in subsection (b), a surety bond, letter of
388 credit, or other similar security acceptable to the commissioner in the amount of \$50,000 plus

389 \$10,000 per location, not exceeding a total addition of \$450,000, must accompany an application
390 for a license.

391 (b) Security must be in a form satisfactory to the commissioner, payable to the
392 Commonwealth, and delivered to the state treasurer for the benefit of any claimant against the
393 licensee to secure the faithful performance of the obligations of the licensee with respect to
394 money transmission. The securities deposited with the state treasurer as herein provided and the
395 money which in case of breach of the bond shall be paid by any licensee or surety thereon, shall
396 constitute a trust fund for the benefit of such persons as shall deposit money with the licensee or
397 authorized agent for transmission and such beneficiaries shall be entitled to an absolute
398 preference as to such money or securities over all general creditors of the licensee.

399 (c) The aggregate liability on a surety bond may not exceed the principal sum of the
400 bond. A claimant against a licensee may maintain an action on the bond, or the commissioner
401 may maintain an action on behalf of the claimant.

402 (d) A surety bond must cover claims for so long as the commissioner specifies, but for at
403 least five years after the licensee ceases to provide money services in this State. However, the
404 commissioner may permit the amount of security to be reduced or eliminated before the
405 expiration of that time to the extent the amount of the licensee's payment instruments or stored-
406 value obligations outstanding in the Commonwealth is reduced. The commissioner may permit a
407 licensee to substitute another form of security acceptable to the commissioner for the security
408 effective at the time the licensee ceases to provide money services in the Commonwealth.

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

411 (f) The commissioner may increase the amount of security required if the financial
412 condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or
413 other relevant criteria.

414 Section 18. Authorized agents.

415 (a) A licensee engaged in the business of money transmission who intends to
416 conduct licensed activities through the use of authorized agents shall submit the names and
417 addresses of such persons listed in the original application to the commissioner for his approval.
418 Upon the commissioner's approval, a licensee may authorize any such authorized agent to
419 conduct business as the agent for said licensee at the address approved by the commissioner.
420 There shall be an express written contract between the parties detailing the duties and
421 responsibilities of such authorized agent. . Additional authorized agents shall not be appointed
422 without the prior written approval of the commissioner, and a licensee shall notify the
423 commissioner within two business days after the termination of any authorized agent by the
424 licensee.

425 (b) A contract between a licensee and an authorized agent must require the authorized
426 agent to operate in full compliance with this chapter. The licensee shall furnish in a record to
427 each authorized agent policies and procedures sufficient to permit compliance with this chapter.

428 (c) An authorized agent shall remit all money owing to the licensee in accordance with
429 the terms of the contract between the licensee and the authorized agent.

430 (d) An authorized agent may not provide money transmission services outside the scope
431 of activity permissible under the contract between the authorized agent and the licensee.

432 Section 19. Permissible investments.

433 (a) A licensee shall maintain at all times permissible investments that have a market value
434 computed in accordance with generally accepted accounting principles of not less than the
435 aggregate amount of all of its outstanding payment instruments issued or sold and money
436 transmitted by the licensee or its authorized agents.

437 (b) The commissioner, with respect to any licensees, may limit the extent to which a type
438 of investment within a class of permissible investments may be considered a permissible
439 investment, except for money and certificates of deposit issued by a bank. The commissioner by
440 rule may prescribe or by order allow other types of investments that the commissioner
441 determines to have a safety standard substantially equivalent to other permissible investments.

442 (c) Permissible investments, even if commingled with other assets of the licensee, are
443 held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment
444 instruments in the event of bankruptcy or receivership of the licensee.

445 SECTION 3. Section 4 of chapter 169 of the General Laws, inserted by section 2, shall
446 take effect upon its passage. Section 1 and the remainder of section 2 shall take effect 9 months
447 after the date of its passage.