

HOUSE No. 876

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 876

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 876) of Michael A. Costello 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. 293 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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; receivables that are payable to a licensee from its
69 authorized agents, in the ordinary course of business, pursuant to contracts which are not past
70 due or doubtful of collection if the aggregate amount of receivables under this paragraph does
71 not exceed 20 percent of the total permissible investments of a licensee and the licensee does not
72 hold at one time receivables under this paragraph in any one person aggregating more than 10
73 percent of the licensee's total permissible investments; and; a share or a certificate issued by an
74 open-end management investment company that is registered with the United States Securities
75 and Exchange Commission under the Investment Companies Act of 1940 [15 U.S.C. Section
76 80a-1-64 (1994 & Supp. V 1999)], and whose portfolio is restricted by the management
77 company's investment policy to investments specified in paragraphs (1) through (4).

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

79 an interest-bearing bill, note, bond, or debenture of a person whose equity shares are
80 traded on a national securities exchange or on a national over-the-counter market, if the
81 aggregate of investments under this paragraph does not exceed 20 percent of the total permissible

82 investments of a licensee and the licensee does not at one time hold investments under this
83 paragraph in any one person aggregating more than 10 percent of the licensee's total permissible
84 investments;

85 a share of a person traded on a national securities exchange or a national over-the-counter
86 market or a share or a certificate issued by an open-end management investment company that is
87 registered with the United States Securities and Exchange Commission under the Investment
88 Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose
89 portfolio is restricted by the management company's investment policy to shares of a person
90 traded on a national securities exchange or a national over-the-counter market, if the aggregate of
91 investments under this paragraph does not exceed 20 percent of the total permissible investments
92 of a licensee and the licensee does not at one time hold investments in any one person
93 aggregating more than 10 percent of the licensee's total permissible investments;

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

101 any other investment the commissioner designates, to the extent specified by the
102 commissioner.

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

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

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

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

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

114 "Stored value," monetary value that is evidenced by an electronic record.

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

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

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

121 money transmission by the United States Postal Service or by a contractor on behalf of
122 the United States Postal Service;

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

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

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

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

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

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

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

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

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

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

170 Upon the filing of an application for a license, if the commissioner finds that the financial
171 responsibility, character, reputation, integrity and general fitness of the applicant, and of the
172 partners or members thereof if the applicant is a partnership or association, and of the officers,
173 directors and principal employees if the applicant is a corporation, are such as to warrant belief
174 that the business will be operated honestly, fairly, soundly and efficiently in the public interest
175 consistent with the purposes of this chapter, he shall thereupon issue the applicant a license to
176 engage in the business of money transmission. If the commissioner shall not so find or, (a) the
177 applicant made a false statement of a material fact in the application for a license; (b) an officer,
178 director or member of the applicant business, including a proposed authorized agent, has, within
179 ten years prior to the filing of the application, been (i) convicted of or pleaded nolo contendere to
180 a felony, or (ii) committed an act involving fraud or deceit, which act is substantially related to
181 the qualifications, functions or duties of a person engaged in the business of money transmission;
182 (c) the applicant violated any of the provisions of this chapter or regulations promulgated
183 hereunder, any similar regulatory scheme of another jurisdiction, or any other law applicable to
184 the conduct of the business sought to be licensed; (d) a licensee or authorized agent of a licensee
185 located at the address at which the applicant intends to operate his business has had any license

186 issued by the commissioner suspended or revoked within six months of the date of the new
187 application; he shall not issue a license and he shall notify the applicant of the denial. Within
188 twenty days thereafter, he shall enter upon his records a written decision and findings containing
189 the reasons supporting the denial and shall forthwith give written notice thereof by registered
190 mail to the applicant. Within thirty days after the date of such notice, the applicant may appeal
191 from such denial to the superior court for Suffolk county, sitting in equity. The court shall hear
192 all pertinent evidence and determine the facts and upon the facts as so determined, review said
193 denial and, as justice and equity may require, affirm the same or order the commissioner to issue
194 such license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

329 Section 15. (a) Whenever the commissioner finds that any licensee or exempt person
330 under section two of this chapter has violated any provision of this chapter or any rule or
331 regulation adopted thereunder, or any other law of the Commonwealth applicable to the conduct

332 of the business of money transmission, the commissioner may, by order, in addition to any other
333 action authorized under this chapter or any rule or regulation made thereunder, impose a penalty
334 upon such person which shall not exceed five thousand dollars for each violation, up to a
335 maximum of one hundred thousand dollars for such violation plus the costs of investigation. The
336 commissioner may impose a penalty which shall not exceed five thousand dollars for each
337 violation of this chapter, or any rule or regulation adopted thereunder, by a person other than a
338 licensee or exempt person under section two of this chapter, plus the costs of investigation.

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

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

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

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

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

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

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

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

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

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

381 any licensee under this chapter;

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

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

385 Section 17. (a) Except as otherwise provided in subsection (b), a surety bond, letter of
386 credit, or other similar security acceptable to the commissioner in the amount of \$50,000 plus
387 \$10,000 per location, not exceeding a total addition of \$450,000, must accompany an application
388 for a license.

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

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

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

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

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

412 Section 18. Authorized agents.

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

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

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

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

430 Section 19. Permissible investments.

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

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

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

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