

HOUSE No. 2189

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>1/19/2017</i>

HOUSE No. 2189

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 2189) of Aaron Michlewitz relative to the regulation of domestic and foreign money transmissions by the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4196 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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. Chapter 167F of the General Laws is hereby amended by striking out
2 section 4, as appearing in the 2012 Official Edition, and inserting in place thereof the following
3 section:--

4 Section 4. A bank may engage directly in the business of selling, issuing or registering
5 checks.

6 SECTION 2. Chapter 169 of the General Laws is hereby repealed.

7 SECTION 3. The General Laws are hereby amended by inserting after chapter 169A
8 the following chapter:-

9 Chapter 169B

10 Licensing and Supervision of Money Transmitters

11 Section 1. As used in this chapter, the following words shall, unless the context clearly
12 requires otherwise, have the following meanings:

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

16 “Branch office”, any office in the commonwealth operated by a licensee at which the
17 licensee engages in money transmission.

18 “Commissioner,” the commissioner of banks.

19 “Licensee,” a person licensed under this chapter to engage in the business of money
20 transmission; provided, however that the term “licensee” shall not include an “authorized agent.”

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

25 “Money transmission,” the sale or issuance of payment instruments or prepaid access
26 or engaging in the business of receiving money for transmission or transmitting money within
27 the United States or to countries other than the United States by any and all means, including but
28 not limited to payment instrument, wire, facsimile or electronic trans.

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

33 “Outstanding payment instrument,” any payment instrument issued by the licensee
34 which has been sold in the United States directly by the licensee or any payment instrument
35 issued by the licensee which has been sold by an authorized agent of the licensee in the United
36 States, which has been reported to the licensee as having been sold and which has not yet been
37 paid by or for the licensee.

38 “Payment instrument,” any electronic or written check, draft, money order, travelers
39 check or other electronic or written instrument or order for the transmission or payment of
40 money, sold or issued to one or more persons, whether or not such instrument is negotiable. The
41 term “payment instrument” shall not include any credit card voucher, any letter of credit or any
42 instrument which is redeemable by the issuer in goods or services.

43 “Person,” any individual, partnership, association, joint-stock association, trust,
44 limited liability company, limited liability partnership or corporation.

45 “Prepaid access,” access to funds or the value of funds that have been paid in advance
46 and can be retrieved or transferred at some point in the future through an electronic device or
47 vehicle, such as a card, code, electronic serial number, mobile identification number or personal
48 identification number. The term “prepaid access” shall not include closed loop prepaid access to
49 funds or the value of funds that can be used only for goods or services in transactions involving a

50 defined merchant or location (or set of locations), such as a specific retailer or retail chain, a
51 college campus, or a subway system.

52 “Primary business,” the principal business of the licensee as determined by the
53 commissioner, exclusive of any business conducted as an agent of the state lottery commission.

54 “Principal shareholder,” any person or group of persons acting in concert who is the
55 owner of 10 per cent or more of any voting class of an applicant’s stock.

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

59 Section 2. No person or entity shall engage in the business of money transmission
60 without first obtaining a license from the commissioner pursuant to this chapter. If a licensee
61 intends to carry on a business at a location other than its main office, including through an
62 authorized agent, such licensee shall procure a license for each branch office or authorized agent;
63 provided, however, that a license shall not be required for a location of an authorized agent that
64 engages solely in the sale of prepaid access, travelers’ checks, or money orders and is not
65 engaged in any other form of money transmission on behalf of the licensee.

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

67 (a) the United States or a department, agency, or instrumentality thereof;

68 (b) money transmission by the United States Postal Service or by a contractor on
69 behalf of the United States Postal Service;

70 (c) a state or a governmental subdivision, agency, or instrumentality thereof;

71 (d) a bank, as defined in section 1 of chapter 167, a national banking association, a
72 federally chartered credit union, a federal savings and loan association, a federal savings bank, or
73 any subsidiary of the above, or any bank, trust company, savings bank, savings and loan
74 association, or credit union organized under the laws of any other state, or any subsidiary of the
75 above, a bank holding company, an office of an international banking corporation, a branch of a
76 foreign bank, a corporation organized pursuant to the Bank Services Act, or a corporation
77 organized under the Edge Act under the laws of a state or the United States if the person does not
78 issue, sell, or provide payment instruments or prepaid access through an authorized agent that is
79 not such a person;

80 (e) electronic funds transfer of governmental benefits for a federal, state, or
81 governmental agency by a contractor on behalf of the United States or a department, agency, or
82 instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality
83 thereof;

84 (f) a board of trade designated as a contract market under the Commodity Exchange
85 Act or a person that, in the ordinary course of business, provides clearance and settlement
86 services for a board of trade to the extent of its operation as or for such a board of trade;

87 (g) a registered futures commission merchant under the federal commodities laws to
88 the extent of its operation as such a merchant;

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

92 (i) A transaction in which the recipient of the money or other monetary value is an
93 agent of the payee pursuant to a written contract and delivery of the money or other monetary
94 value to the agent satisfies the payor's obligation to the payee.

95 (1) For purposes of this subsection, "payee" means the provider of goods or services,
96 who is owed payment of money or other monetary value from the payor for the goods or
97 services.

98 (2) For purposes of this subsection, "payor" means the recipient of goods or services,
99 who owes payment of money or monetary value to the payee for the goods or services.

100 (j) an operator of a payment system to the extent that it provides processing, clearing,
101 or settlement services, between or among persons excluded by this section, in connection with
102 wire transfers, credit card transactions, debit card transactions, prepaid access transactions,
103 automated clearing house transfers, or similar funds transfers; or

104 (k) a person registered as a securities broker-dealer under federal or state securities
105 laws to the extent of its operation as such a broker-dealer.

106 Section 4. The commissioner may adopt, amend, or repeal rules and regulations,
107 which shall include an adequate capitalization requirement in an amount not to exceed
108 \$5,000,000 for entities engaged in the business of money transmission to aid in the
109 administration and enforcement of this chapter. Such regulation may contain such classifications,
110 differentiations, or other provisions, and may provide for such adjustments and exceptions for
111 any class of transactions, as in the judgment of the commissioner are necessary or proper to carry
112 out the purposes of this chapter, to prevent circumvention or evasion thereof, or to facilitate
113 compliance therewith.

114 Notwithstanding any other provision of this chapter, the commissioner may issue an
115 advisory opinion or adopt regulations relative to the business of money transmission for the
116 purpose of maintaining consistency with regulations adopted by a federal regulatory agency and
117 governing provisions similar to those contained in this chapter.

118 Section 5. The application for a license shall be in a form prescribed by the
119 commissioner and shall contain the name and address or addresses where the business of the
120 applicant is located and if the applicant is a partnership, association, corporation, or other form of
121 business organization, the names and addresses of each member, director, principal officer
122 thereof, and any individual acting as a manager of an office location. Such application shall also
123 include a description of the activities of the applicant, in such detail and for such periods as the
124 commissioner may require, as well as such further information as the commissioner may require.
125 The commissioner may require a background investigation of each applicant for a license to
126 engage in the business of money transmission by means of fingerprint and state and national
127 criminal history record checks by the department of criminal justice information services
128 pursuant to section 172 of chapter 6 and the Federal Bureau of Investigation. If the applicant is a
129 partnership, association, corporation or other form of business organization, the commissioner
130 may require such background investigation by means of fingerprint checks on each member,
131 director, principal officer of such applicant, and any individual acting as a manager of an office
132 location. Receipt of criminal history record information by a private entity shall be prohibited.
133 Each application for a license shall be accompanied by an investigation fee. Investigation and
134 license fees shall be determined annually by the commissioner of administration under section
135 3B of chapter 7.

136 Upon the filing of an application for a license, if the commissioner finds that the
137 financial responsibility, character, reputation, integrity and general fitness of the applicant, and
138 of the partners or members thereof if the applicant is a partnership or association, and of the
139 officers, directors and principal employees if the applicant is a corporation, are such as to
140 warrant belief that the business will be operated honestly, fairly, soundly and efficiently in the
141 public interest consistent with the purposes of this chapter, the commissioner shall thereupon
142 issue the applicant a license to engage in the business of money transmission. If the
143 commissioner shall not so find or: (a) the applicant made a false statement of a material fact in
144 the application for a license; (b) an officer, director or member of the applicant business,
145 including a proposed authorized agent, has, within 10 years prior to the filing of the application,
146 been (1) convicted of or pleaded nolo contendere to a felony, or (2) committed an act involving
147 fraud or deceit, which act is substantially related to the qualifications, functions or duties of a
148 person engaged in the business of money transmission; (c) the applicant violated any of the
149 provisions of this chapter or regulations promulgated hereunder, any similar regulatory scheme
150 of another jurisdiction, or any other law applicable to the conduct of the business sought to be
151 licensed; (d) a licensee or authorized agent of a licensee located at the address at which the
152 applicant intends to operate the business has had any license, registration or other authorization
153 issued by the commissioner suspended or revoked within 6 months of the date of the new
154 application; the commissioner shall not issue a license and shall notify the applicant of the
155 denial. Within 20 days thereafter, the commissioner shall enter upon the records a written
156 decision and findings containing the reasons supporting the denial and shall forthwith give
157 written notice thereof by registered mail to the applicant. Within 30 days after the date of such
158 notice, the applicant may appeal from such denial to the superior court for Suffolk county, sitting

159 in equity. The court shall hear all pertinent evidence and determine the facts and upon the facts
160 as so determined, review said denial and, as justice and equity may require, affirm the same or
161 order the commissioner to issue such license.

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

167 Section 6. Each license shall contain such information and shall be displayed as may
168 be required by regulation by the commissioner.

169 Such license shall not be transferable or assignable and shall expire annually at such
170 time as determined by the commissioner. The closing of a location of the licensee at the address
171 stated on the license, including an authorized agent, or a change of location of the licensee at the
172 address stated on the license, including an authorized agent, shall require written notification to
173 the commissioner in accordance with regulations promulgated by the commissioner.

174 Notwithstanding the foregoing, if an authorized agent closes or relocates a licensed location
175 without advance notification to the licensee, the licensee shall notify the commissioner within 15
176 calendar days of being so notified by the authorized agent.

177 If there shall be any change among the officers, partners or directors of any licensee or
178 authorized agent, the licensee shall notify the commissioner of the name, address and occupation
179 of each new officer, partner, director, or authorized agent and provide such other information as
180 the commissioner may require in accordance with regulations promulgated by the commissioner.

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

185 Section 8. The commissioner may suspend or revoke a license issued pursuant to this
186 chapter if the commissioner finds that:

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

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

192 Except as provided in subsection (b) of section 9, no license shall be revoked or
193 suspended except after notice and hearing pursuant to chapter 30A.

194 A licensee may surrender a license by delivering to the commissioner written notice
195 that it hereby surrenders such license; provided, however, that such surrender shall not affect the
196 civil or criminal liability of such licensee for acts committed before such surrender.

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

200 In lieu of suspension or revocation of a license issued hereunder, the commissioner
201 may fine a licensee up to a maximum of \$500 per day for each violation.

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

208 (b) If the commissioner makes written findings of fact that the public interest will be
209 irreparably harmed by a delay in issuing an order under subsection (a) the commissioner may
210 issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order,
211 the commissioner shall promptly notify, in writing, the licensee affected thereby that such order
212 has been so entered, the reasons therefor, and that within 20 days after the receipt of a written
213 request for a hearing from such licensee, the matter will be scheduled for such hearing to
214 determine whether or not such temporary order shall become permanent and final. If no such
215 hearing is requested and none is ordered by the commissioner, the order shall remain in effect
216 until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the
217 commissioner, after giving notice of and opportunity for a hearing to the licensee subject to such
218 order, shall, by written finding of facts and conclusions of law, vacate, modify or issue a
219 permanent cease and desist order.

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

224 An order issued pursuant to this section shall be subject to review as provided in
225 chapter 30A.

226 Section 10. A licensee shall, when directed by the commissioner, permit the
227 commissioner or a duly authorized representative to inspect its records and evidence of
228 compliance with this chapter or any rule and regulation issued thereunder and with any other
229 law, rule and regulation applicable to the conduct of its business. The commissioner shall
230 preserve a full record of each such examination of a licensee including a statement of its
231 condition. All records of investigations and reports of examinations by the commissioner,
232 including workpapers, information derived from such reports or responses to such reports, and
233 any copies thereof in the possession of any licensee under the supervision of the commissioner,
234 shall be confidential and privileged communications, shall not be subject to subpoena and shall
235 not be a public record under clause twenty-sixth of section 7 of chapter 4. For the purpose of this
236 paragraph, records of investigation and reports of examinations shall include records of
237 investigation and reports of examinations conducted by a financial regulatory agency of the
238 federal government and any other state, and of any foreign government which are considered
239 confidential by such agency or foreign government and which are in possession of the
240 commissioner. In any proceeding before a court, the court may issue a protective order to seal the
241 record protecting the confidentiality of any such record, and other than any such record on file
242 with the court or filed in connection with the court proceeding, and the court may exclude the
243 public from any portion of a proceeding at which any such record may be disclosed. Copies of
244 such reports of examination shall be furnished to a licensee for its use only and shall not be
245 exhibited to any other person, organization or agency without prior written approval by the
246 commissioner. The commissioner may furnish to regulatory agencies of the federal government,

247 of other states, or of foreign countries, and any law enforcement agency, such information,
248 reports, inspections and statements relating to the licensees under supervision of the division.

249 The commissioner, or an examiner or such others of the commissioner's assistants as
250 may be designated by the commissioner, may summon the directors, officers or agents of a
251 licensee, or any other witnesses, and examine them relative to the affairs, transactions and
252 condition of the licensee, and, for that purpose, may administer oaths. Whoever, without
253 justifiable cause, refuses to appear and testify when so required or obstructs the person making
254 such examination in the performance of such duties, shall be punished by a fine of not more than
255 \$1,000 or by imprisonment for not more than 1 year.

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

260 Section 12. Each licensee shall annually, on or before a date to be determined by the
261 commissioner, file a report with the commissioner containing such information as said
262 commissioner may require concerning the business and operations during the preceding calendar
263 year. A licensee neglecting to file such report or failing to amend the same within 15 days of
264 notice from said commissioner directing the same shall, unless such neglect or failure is due to
265 justifiable cause and not due to willful neglect, pay to the commonwealth \$50 for each day
266 during which such neglect or failure continues.

267 A licensee shall keep and use such business records in such form and at such location
268 as said commissioner shall, by regulation, determine, which shall enable said commissioner to

269 determine whether such licensee is complying with the provisions of this chapter and any rules
270 or regulations promulgated hereunder by said commissioner and any other law, rule or regulation
271 applicable to the conduct of the business for which it is licensed under this chapter. Such
272 regulations may contain provisions for the suspension or revocation of licenses for violations
273 hereof and for such records to be recorded, copied or reproduced by photographic, photostatic,
274 microfilm, microcard, miniature photographic, electronic, including, but not limited to, optical
275 imaging, or other process which accurately reproduces or forms a durable medium for
276 reproducing the original record or document or in any other form or manner authorized by the
277 commissioner; provided, however, that nothing in this section shall be construed to permit any
278 such licensee to destroy original records or documents. Each such licensee shall preserve all such
279 business records for as long a period as the commissioner shall prescribe by regulation.
280 Notwithstanding the provisions of any general or special law or the Massachusetts Rules of Civil
281 Procedure to the contrary, service of a subpoena for business records upon a licensee, delivered
282 to an office of such licensee located within the commonwealth shall be deemed to have been
283 served at the location, whether within or outside the commonwealth, where the original business
284 records or documents are kept or maintained.

285 Section 13. The commissioner or an aggrieved party may enforce the provisions of
286 this chapter, or restrain any violations thereof, by filing a civil action in a court of competent
287 jurisdiction. A violation of this chapter or a rule or regulation adopted hereunder, shall constitute
288 a violation of chapter 93A.

289 Section 14. Whoever violates any provision of this chapter or any rule or regulation
290 made thereunder by the commissioner shall be punished by a fine of not more than \$5,000 or by
291 imprisonment in state prison for not more than 5 years, or both. Each day a violation continues

292 shall be deemed a separate offense. The penalty provision of this section shall be in addition to,
293 and not in lieu of, any other provision of law applicable to a licensee or other person for violating
294 section 2 or any rule or regulation made thereunder.

295 Section 15. (a) Whenever the commissioner finds that any licensee or exempt person
296 under section 2 has violated any provision of this chapter or any rule or regulation adopted
297 thereunder, or any other law of the commonwealth applicable to the conduct of the business of
298 money transmission, the commissioner may, by order, in addition to any other action authorized
299 under this chapter or any rule or regulation made thereunder, impose a penalty upon such person
300 which shall not exceed \$5,000 for each violation, up to a maximum of \$100,000 for such
301 violation plus the costs of investigation. The commissioner may impose a penalty which shall not
302 exceed \$5,000 for each violation of this chapter, or any rule or regulation adopted thereunder, by
303 a person other than a licensee or exempt person under section 2, plus the costs of investigation.

304 (b) Nothing in this section shall limit the right of any individual or entity who has
305 been injured as a result of any violation of this chapter by a licensee, or any person other than a
306 licensee or exempt person under section 2, to bring an action to recover damages or restitution in
307 a court of competent jurisdiction.

308 (c) Any findings or order issued by the commissioner pursuant to this section shall be
309 subject to review as provided in chapter 30A.

310 Section 16. (a) Whenever the commissioner determines that any person has, directly
311 or indirectly, violated any section of this chapter or any rule or regulation adopted thereunder,
312 applicable to the conduct of the business of money transmission, or any order issued by the

313 commissioner under this chapter or any written agreement entered between such licensee and the
314 commissioner, the commissioner may serve upon such person a written notice of intention:

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

317 (2) to prohibit the person from applying for or obtaining a license from the
318 commissioner for a period up to 36 months following the effective date of an order issued under
319 subsection (b) or (c); or

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

324 (b) A written notice issued under subsection (a) shall contain a written statement of
325 the facts that support the prohibition and shall give notice of an opportunity for a hearing to be
326 held thereon. Such hearing shall be fixed for a date not more than 30 days after the date of
327 service upon the commissioner of such request for a hearing. If such person fails to submit a
328 request for a hearing within 20 days of service of notice under subsection (a), or otherwise fails
329 to appear in person or by a duly authorized representative, such party shall be deemed to have
330 consented to the issuance of an order of such prohibition in accordance with the notice.

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

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

340 (e) Except as consented to in writing by the commissioner, any person who, pursuant
341 to an order issued under subsection (b) or (c), has been prohibited from participating in whole or
342 in part in the conduct of the business of money transmission in the commonwealth shall not,
343 while such order is in effect, continue or commence to perform in the capacity of a principal
344 employee, or otherwise participate in any manner, if so prohibited by order of the commissioner,
345 in the conduct of the affairs of:

346 (1) any licensee under this chapter;

347 (2) any other business which requires a license from the commissioner; or

348 (3) any bank, as defined under section 1 of chapter 167, or any subsidiary thereof.

349 Section 17. (a) Except as otherwise provided in subsection (b), a surety bond, letter of
350 credit, or other similar security acceptable to the commissioner in the amount of \$50,000 plus
351 \$10,000 per location, not exceeding a total addition of \$450,000, shall accompany an application
352 for a license.

353 (b) Security shall be in a form satisfactory to the commissioner, payable to the
354 commonwealth, and delivered to the state treasurer for the benefit of any claimant against the
355 licensee to secure the faithful performance of the obligations of the licensee with respect to

356 money transmission. The securities deposited with the state treasurer as herein provided and the
357 money which in case of breach of the bond shall be paid by any licensee or surety thereon, shall
358 constitute a trust fund for the benefit of such persons as shall deposit money with the licensee or
359 authorized agent for transmission and such beneficiaries shall be entitled to an absolute
360 preference as to such money or securities over all general creditors of the licensee.

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

364 (d) A surety bond shall cover claims for so long as the commissioner specifies, but for
365 at least 5 years after the licensee ceases to provide money services in the commonwealth;
366 provided, however, that the commissioner may permit the amount of security to be reduced or
367 eliminated before the expiration of that time to the extent the amount of the licensee's payment
368 instruments or prepaid access obligations outstanding in the commonwealth is reduced. The
369 commissioner may permit a licensee to substitute another form of security acceptable to the
370 commissioner for the security effective at the time the licensee ceases to provide money services
371 in the commonwealth.

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

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

377 Section 18. (a) A licensee engaged in the business of money transmission who intends
378 to conduct licensed activities through the use of authorized agents shall submit the names and
379 addresses of such persons listed in the original application to the commissioner for his approval.
380 Upon the commissioner’s approval, a licensee may authorize any such authorized agent to
381 conduct business as the agent for said licensee at the address approved by the commissioner;
382 provided, however, that an authorized agent that engages solely in the sale or issuance of prepaid
383 access, travelers’ checks, or money orders and is not engaged in any other form of money
384 transmission on behalf of a licensee shall not require the approval of the commissioner. There
385 shall be an express written contract between the parties detailing the duties and responsibilities of
386 such authorized agent. Additional authorized agents shall not be appointed without the prior
387 written approval of the commissioner, and a licensee shall notify the commissioner within 5
388 business days after the termination of any authorized agent by the licensee.

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

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

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

396 Section 19. (a) Except to the extent otherwise limited by the commissioner pursuant to
397 section 20, the following shall be considered permissible investments:

398 (1) cash, a certificate of deposit, or senior debt obligation of an insured depository
399 institution, as defined in section 3 of the Federal Deposit Insurance Act 12 U.S.C. Section 1813
400 (1994 & Supp. V. 1999);

401 (2) banker's acceptance or bill of exchange that is eligible for purchase upon
402 endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a
403 Federal Reserve Bank;

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

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

410 (5) receivables that are payable to a licensee from its authorized agents, in the ordinary
411 course of business, pursuant to contracts which are not past due or doubtful of collection. A
412 receivable shall be deemed to be past due or doubtful of collection if the money owed to the
413 licensee is not remitted within seven business days. However, the aggregate amount of
414 receivables under this paragraph from any one person shall not comprise more than 10 percent
415 of the licensee's total permissible investments; and;

416 (6) a share or a certificate issued by an open-end management investment company
417 that is registered with the United States Securities and Exchange Commission under the
418 Investment Companies Act of 1940 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and

419 whose portfolio is restricted by the management company's investment policy to investments
420 specified in paragraphs (1) through (4).

421 (b) The following investments shall be permissible, but only to the extent specified in
422 this subsection:

423 (1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares
424 are traded on a national securities exchange or on a national over-the-counter market, if the
425 aggregate of investments under this paragraph does not exceed 20 percent of the total permissible
426 investments of a licensee and the licensee does not at one time hold investments under this
427 paragraph in any one person aggregating more than 10 percent of the licensee's total permissible
428 investments;

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

438 (3) a demand-borrowing agreement made to a corporation or a subsidiary of a
439 corporation whose securities are traded on a national securities exchange if the aggregate of the
440 amount of principal and interest outstanding under demand-borrowing agreements under this

441 paragraph does not exceed 20 percent of the total permissible investments of a licensee and the
442 licensee does not at one time hold principal and interest outstanding under demand-borrowing
443 agreements under this paragraph with any one person aggregating more than 10 percent of the
444 licensee's total permissible investments; and

445 (4) any other investment the commissioner designates, to the extent specified by the
446 commissioner.

447 (c) The aggregate of investments under subsection (b) may not exceed 50 percent of
448 the total permissible investments of a licensee calculated in accordance with section 20.

449 Section 20. (a) A licensee shall maintain at all times permissible investments that have
450 a market value computed in accordance with generally accepted accounting principles of not less
451 than the aggregate amount of all of its outstanding payment instruments issued or sold and
452 money transmitted by the licensee or its authorized agents.

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

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

461 SECTION 4. Section 4 of chapter 169B of the General Laws, as inserted by section 3,
462 shall take effect upon passage. Section 1 and the remainder of section 3 shall take effect 9
463 months after the date of its passage.

464 SECTION 5. (a) A license issued pursuant to chapter 169 of the General Laws or
465 section 4 of chapter 167F of the General Laws, including all authorized agent location
466 designations, that is in effect immediately before the effective date of this act shall remain in
467 force as a license under said chapter 169. Such licensees shall file a renewal application in
468 accordance with section 12 of chapter 169B of the General Laws.

469 (b) Any person that was not required to obtain a license pursuant to chapter 169 of the
470 General Laws or pursuant to section 4 of chapter 167F of the General Laws, but that is now
471 required to obtain a license under chapter 169B shall file an application for a license within 6
472 months of the effective date of this act in order to continue conducting money transmission in the
473 commonwealth directly or through authorized agents. If such application is timely filed and
474 pending with the commissioner, that person may continue to conduct money transmission in this
475 commonwealth, until such time as the application has been approved, withdrawn or denied.

476 (c) All authorized agent designations under section 4 of chapter 167F of the General
477 Laws shall be deemed in compliance with this chapter so long as within 6 months of the effective
478 date of this act, such authorized agents are submitted for approval with the commissioner.