

Effective 5/12/2015

Chapter 25
Money Transmitter Act

Part 1
General Provisions

7-25-101 Title.

This chapter is known as the "Money Transmitter Act."

Enacted by Chapter 284, 2015 General Session

7-25-102 Definitions.

As used in this chapter:

- (1) "Applicant" means a person filing an application for a license under this chapter.
- (2) "Authorized agent" means a person designated by the licensee under this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.
- (3) "Executive officer" means the licensee's president, chair of the executive committee, executive vice president, treasurer, chief financial officer, or any other person who performs similar functions.
- (4) "Key shareholder" means a person, or group of persons acting in concert, who is the owner of 20% or more of a class of an applicant's stock.
- (5) "Licensee" means a person licensed under this chapter.
- (6) "Material litigation" means litigation that, according to generally accepted accounting principles, is considered significant to a person's financial health and would be required to be referenced in an annual audited financial statement, report to shareholders, or similar document.
- (7) "Money transmission" means the sale or issuance of a payment instrument or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.
- (8) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
- (9) "Outstanding payment instrument" means a payment instrument issued by the licensee that has been sold in the United States directly by the licensee or a payment instrument issued by the licensee that has been sold and reported to the licensee as having been sold by an authorized agent of the licensee in the United States, and that has not yet been paid by or for the licensee.
- (10)
 - (a) "Payment instrument" means a check, draft, money order, travelers check, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable.
 - (b) "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.
- (11) "Remit" means either to make direct payment of the money to the licensee or its representatives authorized to receive the money, or to deposit the money in a depository institution in an account in the name of the licensee.

Enacted by Chapter 284, 2015 General Session

7-25-103 Rules.

The commissioner may make a rule authorized by this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including to:

- (1) restrict or prohibit practices that are misleading, unfair, or abusive;
- (2) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and a money transmitter; and
- (3) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations.

Enacted by Chapter 284, 2015 General Session

**Part 2
Licensing**

7-25-201 Licensing required.

- (1) Unless exempt under Section 7-25-202, a person may not engage in the business of money transmission without a license.
- (2) A licensee may conduct its business in this state at one or more locations, directly or indirectly owned, or through one or more authorized agents, or both, pursuant to the single license granted to the licensee.

Enacted by Chapter 284, 2015 General Session

7-25-202 Exemptions.

This chapter does not apply to:

- (1) the United States or a department or agency of the United States;
- (2) the state or a political subdivision of the state; or
- (3) a depository institution or a trust company organized under the laws of a state or the United States.

Enacted by Chapter 284, 2015 General Session

7-25-203 License qualifications.

- (1) An applicant for a license shall:
 - (a) demonstrate, and a licensee shall maintain, a net worth of not less than \$1,000,000 as demonstrated by a financial statement for the most recent fiscal year that is prepared and certified by an independent auditor and is satisfactory to the commissioner; and
 - (b) demonstrate experience, character, and general fitness to command the confidence of the public and warrant the belief that the business to be operated will be operated lawfully and fairly.
- (2) A corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. A noncorporate applicant shall, at the time of the filing of an application for a license under this chapter and at all times after a license is issued, be qualified to do business in the state.

- (3) Subject to the commissioner's discretion, a person may not be licensed under this chapter to do business in the state:
 - (a) if the person has been convicted of, or pled guilty or no contest to, a felony:
 - (i) during the seven years preceding the day on which the individual files an application; or
 - (ii) at any time, if the felony involves an act of:
 - (A) fraud;
 - (B) dishonesty;
 - (C) breach of trust; or
 - (D) money laundering; or
 - (b) if an executive officer, key shareholder, or director of the person has been convicted of, or pled guilty or no contest to, a felony:
 - (i) during the seven years preceding the day on which the individual files an application; or
 - (ii) at any time, if the felony involves an act of:
 - (A) fraud;
 - (B) dishonesty;
 - (C) breach of trust; or
 - (D) money laundering.
- (4) The applicant shall submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.
- (5) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons being licensed under this chapter.

Enacted by Chapter 284, 2015 General Session

7-25-204 License application -- Bond.

- (1) To apply for a license under this chapter, a person shall:
 - (a) submit an application in writing;
 - (b) pay the original license fee required by Section 7-1-401; and
 - (c) submit a surety bond in accordance with Subsection (3).
- (2) An application shall contain:
 - (a) the exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;
 - (b) the history of the applicant's material litigation and criminal convictions for the seven-year period before the date the application is submitted;
 - (c) a description of the activities conducted by the applicant and a history of operations;
 - (d) a description of the business activities in which the applicant seeks to be engaged in the state;
 - (e) a list identifying the applicant's authorized agents in the state, if any, at the time of the filing of the license application;
 - (f) a sample authorized agent contract, if applicable;
 - (g) a sample form of payment instrument, if applicable;
 - (h) the one or more locations at which the applicant and its authorized agents, if any, propose to conduct the licensed activities in the state; and
 - (i) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)

- (a) An applicant shall submit with an application filed under this chapter a surety bond satisfactory to the commissioner in the minimum sum of \$50,000 to reimburse the state for expenses of any kind or nature that the department may incur in connection with an administrative or judicial proceeding against a licensee, former licensee, or seller relating to the issuance or sale of a payment instrument in the state.
- (b) A licensee shall maintain a surety bond meeting the requirements of Subsection (3)(a) for three years after the licensee ceases money transmission operations in the state. Except that the commissioner may permit the surety bond to be reduced or eliminated before the end of the three-year period to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.
- (c) A surety bond shall remain in effect until cancellation, which may occur only after 30 days' written notice to the commissioner. Cancellation may not affect liability incurred or accrued during that period.

Enacted by Chapter 284, 2015 General Session

7-25-205 Issuance of license.

- (1) Upon the filing of a complete application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which is to be borne by the applicant in accordance with Subsection 7-1-401(7).
- (2) The commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state if the commissioner finds that:
 - (a) the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
 - (b) the applicant has fulfilled the requirements imposed by this chapter; and
 - (c) the applicant has paid the required original license fee under Section 7-1-401.

Enacted by Chapter 284, 2015 General Session

7-25-206 Renewal of license.

- (1) A license issued or renewed pursuant to this chapter expires on December 31. A licensee may renew the license through the nationwide database for the ensuing 12-month period upon application by the license holder showing continued compliance with the requirements of Sections 7-25-201, 7-25-203, and 7-25-204, and the payment of the license renewal fee required by Section 7-1-401 to the commissioner.
- (2) The licensee shall include in its renewal application:
 - (a) a copy of the licensee's most recent audited unconsolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, except that a licensee may provide the most recent audited consolidated annual financial statement of the parent corporation if the statement separately includes the balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes of financial position of the licensee;
 - (b) material changes to the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;

- (c) a list of the locations within this state at which business regulated by this chapter is conducted by either the licensee or its authorized agent;
 - (d) notification of material litigation or litigation relating to money transmission; and
 - (e) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) Failure to pay the renewal fee or to submit a completed renewal application between November 1 and December 31 shall cause the license to expire at the close of business on December 31.

Enacted by Chapter 284, 2015 General Session

Part 3

Operational Requirements

7-25-301 Reporting requirements.

- (1) Within 15 days of the occurrence of an event listed in this Subsection (1), a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in the state:
- (a) the filing for bankruptcy or reorganization by the licensee;
 - (b) the institution of revocation or suspension proceedings against the licensee by a state or governmental authority with regard to the licensee's money transmission activities;
 - (c) a felony indictment of the licensee or any of its officers, directors, or principals related to money transmission activities;
 - (d) a felony conviction of the licensee or any of its officers, directors, or principals related to money transmission activities; and
 - (e) any other event that the commissioner may determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) An authorized agent shall report to the licensee the theft or loss of payment instruments valued at \$5,000 or more within 24 hours from the time the authorized agent knew or should have known of the theft or loss. Upon the receipt of the report, the licensee shall immediately provide the information to the commissioner.

Enacted by Chapter 284, 2015 General Session

7-25-302 Changes in control of a licensee.

- (1) A change in control of a licensee shall require prior notice to the commissioner. In the case of a publicly traded corporation, notification shall be made in writing within 15 days of a change or acquisition of control of a licensee. Upon notification, the commissioner may require information considered necessary to determine whether an application for a license is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose a risk to the interests of the public.
- (2) Whenever control of a licensee is acquired or exercised in violation of this section, the license of the licensee shall be considered revoked as of the date of the unlawful acquisition of control. The licensee, or its controlling person, shall surrender the license to the commissioner on demand.

Enacted by Chapter 284, 2015 General Session

7-25-303 Authorized agent contracts.

A licensee desiring to conduct licensed activities through authorized agents shall authorize each authorized agent to operate pursuant to an express written contract, which shall, at a minimum, provide the following:

- (1) that the licensee appoints the person as its agent with authority to sell payment instruments or transmit money on behalf of the licensee in compliance with state and federal law;
- (2) that neither a licensee nor an authorized agent may authorize a subagent without the written consent of the commissioner;
- (3) that licensees are subject to supervision and regulation by the commissioner;
- (4) an acknowledgment that the authorized agent consents to the commissioner's inspection, with or without prior notice to the licensee or authorized agent, of the records of the authorized agent or agents of the licensee; and
- (5) that an authorized agent is under a duty to act only as authorized under the contract with the licensee and that an authorized agent who exceeds its authority is subject to cancellation of its contract by the licensee and disciplinary action by the commissioner.

Enacted by Chapter 284, 2015 General Session

7-25-304 Authorized agent conduct.

- (1) An authorized agent may not make a fraudulent or false statement or misrepresentation to a licensee or to the commissioner.
- (2) A money transmission, sale, or issuance of payment instrument activity conducted by an authorized agent shall be strictly in accordance with the licensee's written procedures provided to the authorized agent.
- (3) An authorized agent shall remit the money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized agent. The failure of an authorized agent to remit money owing to a licensee within the contractual time period shall result in liability of the authorized agent to the licensee for three times the licensee's actual damages. The commissioner shall have the discretion to set, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the maximum remittance time.
- (4) The money, less fees, received by an authorized agent of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized agent for transmission shall, from the time the money is received by the authorized agent until the time when the money or an equivalent amount is remitted by the authorized agent to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized agent commingles the money with any other money or property owned or controlled by the authorized agent, the commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Enacted by Chapter 284, 2015 General Session

7-25-305 Instrument to bear name of licensee.

A payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

Enacted by Chapter 284, 2015 General Session

Part 4 Enforcement

7-25-401 Examinations.

- (1)
 - (a) The commissioner may conduct periodic on-site examinations of a licensee. The commissioner may examine a licensee's authorized or apparent agents. At the commissioner's discretion, written notice of the examination may be provided to the licensee or an authorized or apparent agent.
 - (b) In conducting an examination, the commissioner or the commissioner's staff:
 - (i) shall have full and free access to all the records of the licensee and its authorized or apparent agents; and
 - (ii) may summon and qualify as witnesses, under oath, and examine the directors, officers, members, agents, and employees of a licensee or authorized or apparent agent, and any other person concerning the condition and affairs of the licensee.
 - (c) In accordance with Section 7-1-401, the licensee shall pay the reasonable costs of an examination under this section.
 - (d) An on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states.
 - (e) The commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and a report so accepted is considered for all purposes as an official report of the commissioner.
- (2) Upon reasonable cause, the commissioner may conduct an on-site examination of an unlicensed person to determine whether violations of this chapter have occurred or are occurring. In conducting the examination, the commissioner has the applicable powers provided pursuant to Section 7-25-204.

Enacted by Chapter 284, 2015 General Session

7-25-402 Confidentiality of information.

- (1) Information obtained by the commissioner under this chapter is confidential in accordance with Section 7-1-802.
- (2) Subsection (1) does not prohibit the commissioner from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on the licensees.

Enacted by Chapter 284, 2015 General Session

7-25-403 Termination or suspension of authorized agent activity.

- (1)
 - (a) The commissioner may issue an order suspending or barring an authorized agent from continuing to be or becoming an authorized agent of a licensee during the period for which the order is in effect, if subject to Title 63G, Chapter 4, Administrative Procedures Act, the commissioner finds that an authorized agent of a licensee or a director, officer, employee, or controlling person of the authorized agent has:
 - (i) violated this chapter or a rule or order issued under this chapter;

- (ii) engaged or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or
 - (iii) made or caused to be made in an application or report filed with the commissioner or a proceeding before the commissioner, a statement that was at the time and in the circumstances under which it was made, false or misleading with respect to a material fact, or has omitted to state in the application or report a material fact that is required to be stated in the application or report.
- (b) Upon issuance of the order, the licensee shall terminate its relationship with the authorized agent according to the terms of the order.
- (2) An authorized agent to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner may not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when the person is permitted to resume being an authorized agent of a licensee, comply with all applicable provisions of this chapter and a rule or order issued under this title.

Enacted by Chapter 284, 2015 General Session

7-25-404 Licensee liability.

A licensee's responsibility to a person who purchases a payment instrument or money transmission transaction from a licensee or a licensee's authorized agent is limited to the face amount of the payment instrument or money transmission transaction purchased.

Enacted by Chapter 284, 2015 General Session

7-25-405 Criminal and civil penalties.

- (1) A person who violates this chapter or who files materially false information with a license application or renewal under this chapter is:
- (a) guilty of a class B misdemeanor; and
 - (b) subject to revocation of the person's license under this chapter.
- (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the commissioner determines that a person is engaging in the business of money transmission in violation of this chapter, the commissioner may:
- (a) suspend, revoke, or not renew that person's license under this chapter;
 - (b) issue a cease and desist order from committing any further violation;
 - (c) prohibit the person from continuing to engage in the business of money transmission;
 - (d) impose an administrative fine not to exceed \$1,000 per violation, except that the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or
 - (e) take any combination of actions listed under this Subsection (2).
- (3) If the commissioner revokes a license, the department is not required to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee is paid.

Enacted by Chapter 284, 2015 General Session

7-25-406 Consent orders -- Emergency order.

- (1) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order must be signed by the person to whom it is

issued or a duly authorized representative, and must indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule or order made or issued under this chapter, has been violated, nor need it constitute a finding by the commissioner that the person has violated any provision of this chapter or any rule or order made or issued under this chapter.

- (2) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.
- (3) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken, which is filed with the commissioner within 20 days of the receipt of the notice of the commissioner's emergency action.

Enacted by Chapter 284, 2015 General Session

7-25-407 Required deposits.

If the commissioner finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution acceptable to the commissioner in such amounts, for such period, and upon such conditions as the commissioner may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

Enacted by Chapter 284, 2015 General Session