

MONEY TRANSMISSION BUSINESS LICENSING LAW
Act of Nov. 3, 2016, P.L. 1002, No. 129

This act may be referred to as the Money Transmitter Act.

AN ACT

Providing for the licensing and regulation of the business of transmitting money or credit for a fee or other consideration by the issuance of money orders, by the sale of checks or by other methods; conferring powers and duties upon the Department of Banking and Securities; and imposing penalties.

Section 1. Definitions.

Unless the context clearly indicates otherwise, the following words when used in this act shall have the following meanings:

"Agent" means any person that provides money transmission services on behalf of another person.

"Closed loop system" means a system in which an entity issues a transmittal instrument which can be used at various physical or virtual locations of that entity.

"Commission" means the Banking and Securities Commission of the Commonwealth, as established under Subarticle C of Article XI-A of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking and Securities Code.

"Department" means the Department of Banking and Securities of the Commonwealth.

"Goods" means personal property bought primarily for personal, family or household use.

"Government benefit" means money or monetary value given to an individual by a Federal, State or local government agency for purposes of financial assistance, including unemployment compensation, supplemental nutritional assistance program benefits and Social Security benefits.

"Hybrid closed loop system" means a system in which an entity issues a transmittal instrument which may be used at a limited number of establishments or entities which have a common bond to the issuing entity and in which the establishments or entities have a written agreement to honor the transmittal instrument.

"License" means a license under this act.

"Money" means currency or legal tender or any other product that is generally recognized as a medium of exchange.

"Person" includes an individual or an organization but does not include the Federal Government or the government of the Commonwealth or any other state, or any political subdivisions or instrumentalities of such governments.

"Personal money order" means any transmittal instrument in relation to which the purchaser or remitter appoints the seller thereof as the agent for the handling of the transmittal instrument or its proceeds no matter by whom the transmittal instrument is signed.

"Public utility" means the term as defined in 66 Pa.C.S. § 102 (relating to definitions).

"Services" means work, labor and services for other than a commercial or business use.

"Stored value" means money or monetary value in a digital electronic format, stored or capable of storage on an electronic medium in such a manner as to be retrievable and transferable electronically.

"Tangible net worth" means an entity's net worth less intangible assets as determined by generally accepted accounting principles.

"Transmittal instrument" means any check, draft, money order, personal money order, debit card, stored value card, electronic transfer or other method for the payment of money or transmittal of credit, other than a merchandise gift certificate or instrument with a similar purpose sold in the regular course of business by a vendor of personal property or services in a closed loop system or hybrid closed loop system.

Section 2. License Required.

(a) No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration with or on behalf of an individual without first having obtained a license from the department.

(b) This act does not apply to money transmission between business entities in connection with commercial contracts, unless the contracts involve money transmission for personal or household purposes involving individuals.

Section 3. Exemptions.

No license shall be required for any of the following:

(1) Banks, bank and trust companies, credit unions, savings banks and private banks organized under the laws of this Commonwealth; similar banking institutions organized under the laws of the United States or of any other state which are insured by the Federal Deposit Insurance Corporation; similar credit unions organized under the laws of the United States or another state, and insured by the National Credit Union Share Insurance Fund; and savings and loan associations and building and loan associations organized under the laws of another state or of the United States; or their agents.

(2) Agents of a person licensed under this act.

(3) Agents of a Federal, State or local government agency, to the extent that such agents are disbursing government benefits.

(4) Agents that receive payments from individuals on behalf of persons that are creditors, public utilities or providers of goods or services.

Section 4. Qualifications for a License.

(a) To qualify for a license an applicant shall:

(1) have a tangible net worth of at least five hundred thousand dollars (\$500,000); and

(2) Deleted; and

(3) undertake to operate the business honestly, fairly and in accordance with this act.

(b) The department may deny a license if it finds that the applicant, or a director, officer, partner, employee, agent or ultimate equitable owner of ten percent or more of the applicant, has been convicted of a crime of moral turpitude or felony in any jurisdiction, or has been convicted of a crime which, if committed in this Commonwealth, would constitute a crime of moral turpitude or felony, at any time during the seven years prior to

the license application. For purposes of this subsection, a person shall be deemed to have been convicted of a crime if the person:

- (1) has pleaded guilty or nolo contendere to a criminal charge before a domestic, foreign or military court or Federal magistrate; or
- (2) has been found guilty by a decision or judgment of a domestic, foreign or military court or Federal magistrate or by a verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless the plea of guilty or nolo contendere or the decision, judgment or verdict is set aside, vacated, reversed or otherwise abrogated by lawful judicial process.

(c) The department may deny a license or otherwise restrict a license if it finds that the applicant, or a director, officer, partner, employee, agent or ultimate equitable owner of ten percent or more of the applicant:

- (1) has had a license or license application denied, not renewed, suspended or revoked by the department, another Commonwealth licensing agency or any other Federal or State regulatory agency;
- (2) is the subject of an order of the department or any other regulatory agency;
- (3) has violated or failed to comply with any provision of this act or any regulation, statement of policy or order of the department;
- (4) has any outstanding debt to the Commonwealth or any Commonwealth agency; or
- (5) does not possess the financial responsibility, character, reputation, integrity and general fitness to command confidence of the public to warrant the belief that the money transmission business will be operated lawfully, honestly, fairly and within the legislative intent of this act and in accordance with the general laws of this Commonwealth. For purposes of this clause, an applicant is not financially responsible if the applicant has shown a disregard in the management of the applicant's own financial condition. The factors that the department may consider in making a determination regarding an applicant's financial responsibility shall include:
 - (i) current outstanding judgments, other than judgments solely as a result of medical expenses;
 - (ii) current outstanding tax liens or other government liens and filings;
 - (iii) foreclosures or bankruptcies within the past three years; or
 - (iv) a pattern of seriously delinquent accounts within the past three years.

(d) The department may impose conditions on the issuance of a license. If the department determines that conditions imposed upon a licensee have not been fulfilled, the department may take any action authorized under this act against the licensee that the department deems necessary.

Section 5. Application for License.

(a) Applications for license shall be in the form prescribed by the department. Among other things, the application shall state the full name of:

- (1) the applicant, if an individual;
- (2) each partner, if the applicant is a partnership;
- (3) each trustee and officer thereof, if the applicant is a trust;

- (4) each officer and director thereof, if the applicant is a corporation, joint stock association or other unincorporated association;
- (5) each other business in which applicant and any affiliated companies are engaged; and
- (6) the name and address of each agent or subagent conducting business in this Commonwealth.

(b) A person applying for a new or renewal license and who is not located in this Commonwealth shall file with the application for license an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the applicant in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed with the department and the other shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business in this Commonwealth and to the person's principal place of business.

Section 6. Fee, Financial Statement and Security.

- (a) Each application for a license shall be accompanied by:
 - (1) an application fee of five thousand dollars (\$5,000);
 - (2) a financial statement showing a tangible net worth of at least five hundred thousand dollars (\$500,000);
 - (3) a bond in the penal sum of one million dollars (\$1,000,000) executed by a surety company authorized to transact business within the Commonwealth of Pennsylvania or securities as provided in the following subsection. The bond shall run to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and of any person or persons who may have a cause of action against the licensee for failure to carry out the terms of any transmittal instrument which the licensee shall have issued and who were residents of the Commonwealth of Pennsylvania at the time the cause of action arose. The condition of the bond shall be that the licensee will comply with and abide by the provisions of this act and the rules and regulations of the department lawfully promulgated under this act and that the licensee will pay to the Commonwealth, to the department or to any other person any moneys that may become due from the licensee to the Commonwealth or to the department or to any other person under the provisions of this act or of any transmittal instrument issued by the licensee within this Commonwealth and who were residents of the Commonwealth of Pennsylvania at the time the cause of action arose. If any person shall be aggrieved by the misconduct of any licensee, he may upon recovering judgment against such licensee, issue execution under such judgment and maintain an action upon the bond of the licensee in any court having jurisdiction of the amount claimed, provided the department assents thereto.
- (b) Deleted.

(b.1) If the department, in its discretion, shall determine the bond or deposit of securities provided for in clause (3) of subsection (a) is not adequate, the department may, after an examination and a consent agreement or order, require an additional bond in an amount up to the average daily outstanding balance of money received for transmission in this Commonwealth during the thirty days preceding the department's requirement plus an additional ten percent of the amount of the average daily outstanding balance subject to the same conditions and the same right of execution provided for in clause (3) of subsection (a).

(c) Should any licensee become insolvent, the principal sum of the bond shall be applied to the payment in full of claims arising out of the issuance of transmittal instruments in this Commonwealth and any administrative costs incurred by or fines imposed by the department.

Section 7. Investigation Issuance of License.

(a) Upon the filing of a new license application, the department shall make such investigation as is necessary to determine whether the applicant is qualified to receive a license. If, after reasonable investigation of the new license application it is determined that the applicant qualifies for a license, a license shall be issued. If it is determined that the applicant does not qualify for a license, the application shall be denied.

(b) Whenever the department rejects an application for a license it shall furnish the applicant with a written specification of the reason or reasons therefor. Any applicant whose application for a license is rejected by the department may within thirty days' notice of the rejection request that the department hold a hearing.

Section 8. Term of License.

Licenses issued under this act shall be for a term of not more than fourteen months as determined by the department.

Section 9. Renewal of Licenses.

(a) All applications for renewals of licenses shall be filed with the department before the expiration date of the license. Unless the department shall have given to the applicant twenty days' previous notice of objections to the renewal of his license based upon the violation of this act or upon the licensee's failure any longer to have the qualifications required for the issuance of a license, the license shall be renewed upon the payment of the renewal fee of five thousand dollars (\$5,000).

(b) The renewal application shall be accompanied by a bond in conformity with the requirements applicable to an original application for license. The bond shall be in the same amounts and subject to the same terms and conditions as in the case of an original application, unless an additional bond is required under the provisions of subsection (b.1) of section 6.

Section 10. Authority of the Department.

(a) The department shall have the authority to:

(1) Examine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this act. Pursuant to this

authority, the department may remove any instrument, document, account, book, record or file of a licensee to a location outside of the licensee's office location. A person who is not licensed under this act shall be presumed to be engaged in business contemplated by this act if the person advertises or solicits business for which a license is required by the provisions of this act. In those cases, the department is authorized to examine the books, accounts, papers, records, documents, files, safes and vaults of the persons for the purpose of discovering violations of this act. The costs of the examination shall be borne by the licensee or the entity subject to the examination.

(2) Conduct administrative hearings on any matter pertaining to this act, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at any hearing. The instruments, documents, accounts, books and records may be retained by the department until the completion of all proceedings in connection with which the materials were produced. A department official may administer oaths and affirmations to a person whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or to testify on a matter concerning that which the person may be lawfully interrogated, on application by the department, the Commonwealth Court may issue an order requiring the attendance of the person, the production of instruments, documents, accounts, books and records and the giving of testimony.

(3) Request and receive information or records of any kind, including reports of criminal history record information from any Federal, State, local or foreign government entity regarding an applicant for a license, licensee or person related in any way to the business of the applicant or licensee, at a cost to be paid by the applicant or licensee.

(4) Issue regulations, statements of policy or orders as may be necessary for the proper conduct, including safety and soundness, of the money transmission business by licensees, the issuance and renewal of licenses and the enforcement of this act.

(5) Prohibit or permanently remove a person or licensee responsible for a violation of this act from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the department.

(6) Order a person or licensee to make restitution for actual damages to individuals caused by any violation of this act.

(7) Issue cease and desist orders that are effective immediately, subject to a hearing as specified in subsection (b) within fourteen days of the issuance of the order.

(8) Impose such other conditions as the department deems appropriate.

(b) A person aggrieved by a decision of the department may appeal the decision of the department to the commission. The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(c) The department may maintain an action for an injunction or other process against a person to restrain and prevent the person from engaging in an activity violating this act.

(d) A decision of the commission, or an unappealed order of the department, shall be a final order of the department and shall be enforceable in a court of competent

jurisdiction. The department may publish final adjudications issued under this section, subject to redaction or modification to preserve confidentiality.

(e) A person aggrieved by a decision of the commission may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A. (relating to judicial review of Commonwealth agency action).

Section 10.1. Suspension, Revocation or Refusal.

(a) The department may suspend, revoke or refuse to renew a license issued under this act if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the department's refusal to issue the license or if a licensee or director, officer, partner, employee or owner of a licensee has:

(1) Made a material misstatement in an application or any report or submission required by this act or any department regulation, statement of policy or order.

(2) Failed to comply with or violated any provision of this act or any regulation or order promulgated or issued by the department under this act.

(3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the money transmission business.

(4) Been convicted of or pleaded guilty or nolo contendere to a crime of moral turpitude or felony.

(5) Permanently or temporarily been enjoined by a court of competent jurisdiction from engaging in or continuing conduct or a practice involving an aspect of the money transmission business.

(6) Become the subject of an order of the department or any other state regulatory agency denying, suspending or revoking a license.

(7) Become the subject of a United States Postal Service fraud order.

(8) Failed to comply with the requirements of this act to make and keep records prescribed by regulation, statement of policy or order of the department, to produce records required by the department or to file financial reports or other information that the department by regulation, statement of policy or order may require.

(9) Demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license.

(10) Become insolvent, meaning that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature or the applicant or licensee is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(b) The department may reinstate a license which was previously suspended, revoked or denied renewal if all of the following conditions are met:

(1) the condition which warranted the original action has been corrected to the department's satisfaction;

(2) the department has reason to believe that the condition is not likely to occur again; and

(3) the licensee satisfies all other requirements of this act.

Section 11.1. Licensee Requirements.

A licensee shall:

- (1) Operate in a safe and sound manner, ensuring that its practices and the practices of its agents, if applicable, do not create the likelihood of material loss, insolvency or dissipation of assets, or otherwise materially prejudice the interest of individuals who use the licensee's services to transmit money.
- (2) Comply with all applicable Federal or State laws and rules pertaining to the business of money transmission.
- (3) Register all of its agents who engage in the business of money transmission involving individuals who are located in this Commonwealth.
- (4) On a date determined by the department, file a report setting forth such information as the department shall require concerning the money transmission business conducted by the licensee. Licensees who fail to file the required report by the date required by the department may be subject to a penalty of one hundred dollars (\$100) for each day after the due date until the report is filed.
- (5) Provide the department with written notice within ten days of any change in status, including address, ownership, directors, officers, contact information and the reason for the change.
- (6) Maintain at all times the bond and tangible net worth required by this act.

Section 12. Agents.

- (a) A licensee or exempted person may conduct business at one or more locations through such agents as the licensee or exempted person may from time to time appoint. No license or any license fee shall be required of any such agent.
- (b) An agent engaged in the business of money transmission under subsection (a) or subject to an exemption under section 3 shall be appointed pursuant to a written agreement between the agent and the person on whose behalf the agent is acting.
- (c) The written agreement shall contain at least the following provisions:
 - (1) There is consent by the agent and the person on whose behalf the agent is acting.
 - (2) The agent is acting on behalf of the person employing the agent's service for the transmission of money.
 - (3) The agent is subject to the control of the person on whose behalf the agent is acting, meaning that the licensee or exempted person takes complete financial responsibility for the money being transmitted from the moment an individual initiates the transmission of money until the intended recipient receives the transmitted money.
 - (4) There is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the person on whose behalf the agent is acting.
 - (5) Receipt of funds by the agent is deemed receipt of funds by the person on whose behalf the agent is acting.
 - (6) The agent may not provide money transmission outside the scope of activity permissible under the written agreement between the agent and the person on whose behalf the agent is acting except to the extent that the agent is licensed itself or operating as an agent for another person.

(7) Individuals doing business with the agent are aware that the agent is working on behalf of the person on whose behalf the agent is acting.

Sections 13, 13.1, 14 and 15 of the act are repealed.

Section 16. Penalties.

Any person who directly or through another violates or attempts to violate any provision of this act shall be guilty of a felony, and shall be fined not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000) and shall be imprisoned for not more than seven years in the discretion of the court. Any person, whether licensed or not licensed under the provisions of this act, or any director, officer, employee or agent of any such person, who shall violate the provisions of this act or shall direct or consent to such violations shall be subject to a fine levied by the department of up to ten thousand dollars (\$10,000) for each offense.