

CHAPTER 258
HB 666-FN – FINAL VERSION

11Mar2015... 0681h
05/07/2015 1499s
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2015 SESSION

15-0714
08/03

HOUSE BILL **666-FN**

AN ACT relative to licensing of money transmitters.

SPONSORS: Rep. Jones, Straf 24

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill makes certain changes to the regulation of money transmitters.

This bill is a request of the banking department.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to licensing of money transmitters.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 258:1 Money Transmitters. RSA 399-G is repealed and reenacted to read as follows:

2

CHAPTER 399-G

3

LICENSING OF MONEY TRANSMITTERS

4

399-G:1 Definitions. In this chapter:

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I. "Affiliate" means a partnership, corporation, trust, limited liability company, or other organization or person that directly or indirectly owns or controls, or is under common ownership with, or is directly or indirectly owned or controlled by, a licensee.

6

II. "Applicant" means a person who applies for a principal office license under this chapter.

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III. "Authorized delegate" means a person that is located in this state that a licensee designates to provide money transmission services on behalf of the licensee.

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IV. "Average daily outstanding money transmissions" means the total dollar volume less fees sent by persons in all jurisdictions where business is conducted through the licensee's principal office, and its authorized delegates, that has not yet been received in cash by the intended recipients, calculated for a calendar year, divided by 365.

9

V. "Commissioner" means the bank commissioner.

10

VI. "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company if such person:

11

(a) Is a director, general partner, or executive officer;

12

(b) Directly or indirectly has the right to vote 10 percent or more of a class of a voting security or membership interest, or has the power to sell or direct the sale of 10 percent or more of a class of voting securities or membership interest;

13

(c) In the case of a limited liability company, is a managing member; or

14

(d) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

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VII. "Convertible virtual currency" means a digital representation of value that:

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(a) Can be a medium of exchange, a unit of account, and/or a store of value;

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1 (b) Has an equivalent value in real currency or acts as a substitute for real currency;

2 (c) May be centralized or decentralized; and

3 (d) Can be exchanged for currency or other convertible virtual currency.

4 VIII. "Currency" means the coin and paper money of the United States or of any other
5 country that is designated as legal tender and that circulates and is customarily used and accepted
6 as a medium of exchange in the country of issuance.

7 IX. "Department" means the banking department.

8 X. "Direct owner" means any person, including individuals, that owns, beneficially owns, has
9 the right to vote, or has the power to sell or direct the sale of 10 percent or more of the applicant or
10 licensee.

11 XI. "Financial services" or "financial services-related" means securities, commodities,
12 banking, insurance, consumer lending, money transmission, debt adjustment, or real estate,
13 including, but not limited to, acting as or being associated with a bank or savings association, credit
14 union, mortgage lender, mortgage broker, mortgage servicer, real estate salesperson or agent, closing
15 agent, title company, or escrow agent.

16 XII. "Indirect owner" means, with respect to direct owners and other indirect owners in a
17 multilayered organization:

18 (a) In the case of an owner that is a corporation, each of its shareholders that
19 beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or
20 more of that corporation;

21 (b) In the case of an owner that is a partnership, all general partners and those limited
22 and special partners that have the right to receive upon dissolution, or have contributed, 25 percent
23 or more of the partnership's capital;

24 (c) In the case of an owner that is a trust, the trust, each trustee, and each beneficiary of
25 25 percent or more of the trust;

26 (d) In the case of an owner that is a limited liability company ("LLC"):

27 (1) Those members that have the right to receive upon dissolution, or have
28 contributed, 25 percent or more of the LLC's capital; and

29 (2) If managed by elected managers, all elected managers; and

30 (e) In the case of an indirect owner, the parent owners of 25 percent or more of their
31 subsidiary.

32 XIII. "Individual" means a natural person.

33 XIV. "Licensee" means a person duly licensed by the commissioner under this chapter.

34 XV. "Monetary value" means a medium of exchange, whether or not redeemable in currency,
35 and includes convertible virtual currency.

36 XVI. "Money transmission" means:

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1 (a) Engaging in the business of selling or issuing payment instruments or stored value;
2 or

3 (b) Receiving currency or monetary value for transmission to another location.

4 XVII. “Money transmitter” means a person engaged in the business of money transmission.

5 XVIII. “Net worth” means assets minus liabilities calculated in accordance with generally
6 accepted accounting principles.

7 XIX. “Payment instrument” means any electronic or written check, draft, money order,
8 traveler’s check, or other electronic or written instrument or order for the transmission or payment
9 of currency or monetary value, sold or issued to one or more persons, whether or not negotiable. The
10 term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the
11 issuer in goods or services.

12 XX. “Person” means an individual, corporation, business trust, estate, trust, partnership,
13 association, 2 or more persons having a joint or common interest, or any other legal or commercial
14 entity however organized.

15 XXI. “Principal” of the applicant or licensee means an owner with 10 percent or more
16 ownership interest in the applicant or licensee, a corporate officer, director, member, general and
17 limited liability partner, limited partner with 10 percent or more ownership interest, trustee,
18 beneficiary of 10 percent or more of the trust that owns the applicant or licensee, indirect owner,
19 senior manager, and any person occupying similar status or performing similar functions.

20 XXII. “Principal office” means the main office location of a person required to be licensed
21 under this chapter.

22 XXIII. “Publicly traded” means a company whose securities are traded on a securities
23 exchange system approved and supervised by the Securities and Exchange Commission, including
24 but not limited to the NYSE, AMEX, BSE, and NASDAQ. The term also includes a public reporting
25 company that is subject to sections 12 or 15(d) of the Securities Exchange Act of 1934.

26 XXIV. “Registrant” means a person registered as an authorized delegate by the
27 commissioner under this chapter.

28 XXV. “Senior manager” means any officer of record, assistant vice president or higher, office
29 or branch manager, director of operations, or other position the responsibilities of which provide such
30 employee with the discretion or ability to set policy or manage or direct affairs of the licensee as a
31 whole, or of any division or department or unit of the licensee.

32 XXVI. “Stored value” means monetary value that is evidenced by an electronic record.

33 399-G:2 License Required.

34 I. Any person not exempt under RSA 399-G:3 that, in its own name or on behalf of other
35 persons, acts as a money transmitter while physically located in New Hampshire, or with, to, or from

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1 persons located in New Hampshire, shall obtain a license from the department and shall register its
2 authorized delegates located within this state.

3 II. Licensure or registration in the state of New Hampshire under this chapter does not
4 constitute a finding that the commissioner has passed in any way upon the merits or qualifications of
5 such person or that the commissioner has recommended or given approval to any such person. It is
6 unlawful for any licensee or registrant to make, or cause to be made, to any prospective purchaser,
7 customer, or client any representation inconsistent with the provisions of this paragraph.

8 III. Any license fee required by this chapter shall be paid before a license becomes effective.
9 Authorized delegate registrations shall be effective upon the commissioner's receipt of written notice
10 conditioned upon payment of the registration fee within 30 calendar days, as required by RSA 399-G:4.

11 399-G:3 Exemptions. The provisions of this chapter shall not apply to:

12 I. Any bank, trust company, savings and loan association, profit sharing and pension trust,
13 credit union, thrift company, insurance company, or receivership, which may be chartered by this state
14 or any other state or by any agency of the United States.

15 II. The United States or any department, instrumentality, or agency thereof.

16 III. A state, county, city, or any other governmental agency or governmental subdivision of a
17 state.

18 IV. Electronic funds transfer of governmental benefits for a federal, state, county, or
19 governmental agency by a contractor on behalf of the United States or a department, agency, or
20 instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

21 V. Retailers issuing stored value credits or gift cards.

22 VI. A debt adjuster duly licensed pursuant to RSA 399-D that acts as a money transmitter for
23 the sole purpose of providing a debt adjustment service to a consumer under terms of a contract issued
24 pursuant to RSA 399-D and that has a surety bond on file with the commissioner under RSA 399-D in
25 the amount of \$100,000.

26 VII. Other persons not within the intent of this chapter as the commissioner may designate by
27 rule or order.

28 399-G:4 Application and Fees.

29 I.(a) To be considered for licensing, each person shall complete and file with the department
30 one verified application prescribed by the commissioner by rule. At a minimum, the application shall
31 include:

32 (1) The primary business address of the applicant;

33 (2) The applicant's tax identification number;

34 (3) The address of its principal office and all authorized delegates located or to be
35 located within the state;

36 (4) A copy of its FinCEN Form 107 Registration of Money Services Business filing;

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1 (5) The trade name, if any, under which the applicant proposes to conduct such
2 business and evidence of authority to use the trade name in New Hampshire;

3 (6) The articles of incorporation or organization or partnership agreement;

4 (7) The name and address of the New Hampshire resident agent if the applicant is a
5 foreign entity;

6 (8) A financial statement as described in paragraph II(c);

7 (9) A consent to service of process as described in subparagraph V;

8 (10) A list of the principals of the applicant and each principal shall provide his or her
9 social security number and shall authorize the commissioner to conduct a background check; and

10 (11) Any other information that the commissioner may require including, but not
11 limited to, the applicant's form and place of organization, the applicant's proposed method of doing
12 business, the qualifications and business history of the applicant and its principals, and the applicant's
13 financial condition and history.

14 (b) The applicant shall disclose whether the applicant or any of its principals has ever been
15 issued or been the subject of an injunction or administrative order, has ever been convicted of a
16 misdemeanor involving the financial services industry or any aspect of the financial services business,
17 or has ever been convicted of any felony.

18 II.(a) The license issued for the licensee's principal place of business shall be referred to as a
19 "principal office license." Each additional authorization to conduct business issued for money
20 transmission occurring in a location in this state that is separate from the licensee's principal place of
21 business shall be referred to as an "authorized delegate registration." If the applicant desires to
22 transmit money in more than one location, the commissioner, upon favorable action on the applicant's
23 principal office license, shall issue an "authorized delegate registration" for each location where the
24 business of money transmission is to be conducted.

25 (b) Each license application shall be accompanied by a nonrefundable application fee of
26 \$500 for the principal office. Within 30 days from the start of money transmission activity for the
27 licensee at each authorized delegate location, a fee of \$25 shall be paid to and received by the
28 department for each authorized delegate registration, up to a total maximum annual fee of \$5,000 for
29 all locations. Sums collected under this chapter shall be payable to the state treasurer as restricted
30 revenue and credited to the appropriation for the commissioner, consumer credit administration
31 division.

32 (c) Each applicant shall submit detailed financial information sufficient for the
33 commissioner to determine the applicant's ability to conduct the business of a money transmitter with
34 financial integrity.

35 (d) The application shall include a statement of net worth in all cases and an applicant
36 shall demonstrate and maintain a positive net worth computed in accordance with generally accepted

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1 accounting principles. Net worth statements provided in connection with a license application under
2 this section shall be subject to review and verification during the course of any examination or
3 investigation conducted under the authority of RSA 399-G:13.

4 (e) The application shall include a financial statement that shall be prepared in
5 accordance with generally accepted accounting principles with appropriate note disclosures and,
6 unless excepted by an order from the commissioner for hardship reasons, shall be audited by an
7 independent certified public accountant. An applicant's financial statement shall include a balance
8 sheet, income statement, statement of changes in owners' equity, cash flow statement, and
9 statement of net worth.

10 III.(a) Unless the applicant is a publicly traded corporation, the department shall complete a
11 background investigation and criminal history records check on the applicant's principals. If the
12 applicant is a subsidiary, the department shall complete a background investigation and criminal
13 history records check on individuals who are indirect owners.

14 (b) The persons described in subparagraph (a) shall submit to the department a notarized
15 criminal history records release form, as provided by the New Hampshire division of state police,
16 which authorizes the release of the person's criminal records, if any. The person shall submit with
17 the release form a complete set of fingerprints taken by a qualified law enforcement agency or an
18 authorized employee of the department. In the event that the first set of fingerprints is invalid due
19 to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal
20 history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern,
21 the department may, in lieu of the criminal history records check, accept police clearances from
22 every city, town, or county where the person has lived during the past 5 years.

23 (c) The department shall submit the criminal history records release form to the
24 New Hampshire division of state police, which shall conduct a criminal history records check
25 through its records and through the Federal Bureau of Investigation. Upon completion of the
26 background investigation, the division of state police shall release copies of the criminal conviction
27 records to the department. The department shall maintain the confidentiality of all criminal history
28 records information received pursuant to this paragraph.

29 (d) The department may require the applicant or licensee to pay the actual costs of each
30 background investigation and criminal history records check.

31 (e) The department may conduct a pre-licensing examination of the applicant.

32 (f) The department may rely on criminal records checks reported through a national
33 licensing facility in lieu of subparagraphs (b) and (c).

34 IV.(a) Each money transmitter applicant shall post a continuous surety bond in the amount
35 of \$100,000. The surety bond shall be payable to the state of New Hampshire and the bank
36 commissioner of the state of New Hampshire for the benefit of any person who is damaged by any

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1 violation of this chapter and shall be conditioned upon the licensee's compliance with each provision
2 of this chapter.

3 (b) Surety bonds shall include a provision requiring the surety to give written notice to
4 the commissioner 30 days in advance of the cancellation or termination of the bond.

5 (c) Every bond shall provide that no recovery may be made against the bond unless the
6 state makes a claim for recovery or the person brings suit naming the principal within 6 years after
7 the act upon which the recovery or suit is based. The obligations of the surety shall survive the
8 bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation,
9 any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee
10 under any applicable state or federal law, including the United States Bankruptcy Code.

11 (d) When an action is commenced on a licensee's bond, the licensee shall immediately file
12 a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new
13 bond.

14 V. Every applicant for licensing under this chapter shall file with the commissioner, in such
15 form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to
16 receive service of any lawful process in any noncriminal suit, action, or proceeding against the
17 applicant or the applicant's successor, executor, or administrator which arises under this chapter or
18 any rule or order under this chapter after the consent has been filed, with the same force and
19 validity as if served personally on the person filing the consent. A person who has filed such a
20 consent in connection with a previous application need not file another. When any person, including
21 a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or by
22 any rule or order under this chapter, and such person has not filed a consent to service of process
23 under this section and personal jurisdiction over such person cannot otherwise be obtained in this
24 state, that conduct shall be considered equivalent to such person's appointment of the commissioner
25 to receive service of any lawful process. Service may be made by leaving a copy of the process in the
26 office of the commissioner along with \$5, but is not effective unless:

27 (a) The plaintiff, who may be the attorney general in a suit, action, or proceeding
28 instituted by him or her, forthwith sends a notice of the service and a copy of the process by
29 registered mail to the defendant or respondent at such person's last address on file with the
30 commissioner; and

31 (b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or
32 before the return day of the process, if any, or within such further time as the court allows.

33 VI. Applicants shall provide written plans for compliance with federal laws, including but
34 not limited to the Bank Secrecy Act of 1970, as amended, and regulations in 31 C.F.R. part 1010.
35 Such plans shall include required recordkeeping and reporting procedures.

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1 VII. The commissioner may license or register individuals or firms by means of or through
2 the facilities of a national organization which facilitates registration and licensing on a nationwide
3 basis.

4 399-G:5 License and Registration Grant and Renewal.

5 I. Upon the applicant's filing of the complete application, and payment of the required fee, the
6 commissioner shall have, in accordance with RSA 541-A:29, up to 120 days to investigate and
7 determine whether the applicant's financial resources, experience, personnel, and record of past or
8 proposed conduct warrant the public's confidence and the issuance of a license.

9 II. If the commissioner determines that the applicant meets the requirements of this chapter,
10 then the commissioner shall issue a license and or registrations permitting the applicant to engage in
11 the business of money transmission in accordance with the laws of this state.

12 III. Each license issued under the provisions of this chapter shall state the name and address
13 of the principal office of the licensee. Each registration issued under the provisions of this chapter
14 shall state the name and address of the authorized delegate location for which that registration is
15 issued.

16 IV. If a licensee is a person other than a natural person, the license issued to it shall entitle all
17 officers, directors, members, partners, trustees, and employees, and authorized delegates of the
18 licensee to engage in the business of money transmission; provided that one officer, director, member,
19 partner, employee, or trustee of such person shall be designated in the license as the individual to be
20 contacted for purposes of this chapter.

21 V. If the licensee is a natural person, the license shall entitle all employees and authorized
22 delegates of the licensee to engage in the business of money transmission.

23 VI. A principal office license or authorized delegate registration issued under this chapter
24 shall not be transferable or assignable between persons without obtaining the approval of the
25 commissioner before the assignment or transfer.

26 VII. Each license or registration shall remain in force until it has been surrendered, revoked,
27 or suspended in accordance with the provisions of this chapter, or expires in accordance with the
28 provisions of this chapter. Each license or registration shall expire on December 31 of each calendar
29 year.

30 VIII. If a person holds a valid license or registration under this section and is in compliance
31 with this chapter and the rules pursuant to this chapter, such licensee may renew the principal office
32 license and authorized delegate registrations by paying the required fee to the banking department on
33 or before December 31 for the ensuing year that begins on January 1. Failure to renew the license or
34 registration shall result in the license or registration terminating on December 31.

35 IX. A renewal fee, up to a maximum annual fee of \$5,000, shall be submitted with the
36 application for renewal as follows:

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1 (a) \$500 for the principal office license, and

2 (b) \$25 for each authorized delegate registration.

3 399-G:6 License Denial or Abandonment; Appeal.

4 I. If the commissioner determines that the applicant fails to meet the requirements of this
5 chapter, the commissioner shall immediately, in writing, notify the applicant of that determination.

6 II. The commissioner may deny a license application if it is in the public interest and the
7 applicant or the applicant's principal:

8 (a) Has filed an application for licensing which was incomplete in any material respect;

9 (b) Is the subject of an order entered within the past 5 years by this state, any other state,
10 or federal regulator denying, suspending, or revoking a license or registration;

11 (c) Is permanently, preliminarily, or temporarily enjoined by any court of competent
12 jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or
13 collection activities;

14 (d) Is not qualified on the basis of such factors as experience, knowledge, and financial
15 integrity; or

16 (e) Should not be licensed for other good cause shown.

17 III. Applicants may appeal a license denial in accordance with RSA 541-A and rules of the
18 commissioner adopted thereunder.

19 IV. Applicants may petition the banking department for a rehearing in accordance with RSA
20 541 if the decision in an appeal conducted pursuant to paragraph III affirms a denial of a license
21 application.

22 V. The commissioner may deem abandoned and withdraw any application for licensure made
23 pursuant to this chapter if the applicant fails to respond in writing within 180 calendar days to a
24 written request from the commissioner requesting a response. Such request shall be sent via certified
25 mail to the last known address of the applicant that is on file with the commissioner.

26 VI. No application for renewal shall be denied without reasonable cause and the right of
27 appeal pursuant to RSA 541-A and RSA 541.

28 399-G:7 License Posting. It shall be unlawful to engage in the business of money transmission
29 without a conspicuously posted license in the licensee's principal office within this state or a
30 conspicuously posted registration in each of the licensee's authorized delegate offices within this state.

31 399-G:8 License Surrender.

32 I. A licensee who ceases to engage in the business of money transmission at any time during
33 a license year for any cause shall surrender such principal license and authorized delegate
34 registrations, if any, and within 15 calendar days of such cessation shall cause to be published in a
35 newspaper of general circulation in the licensee's market area a notice to such effect, and shall file an

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1 annual report pursuant to RSA 399-G:10 within 15 days of such cessation. The commissioner shall
2 adopt rules, in accordance with RSA 541-A, relative to such notice and the process for surrender.

3 II. Surrender of a license shall not take effect until the commissioner deems the surrender
4 process complete.

5 III. Failure to comply with the provisions of this section and rules adopted under this section
6 shall be cause for denial of future license applications and the imposition of penalties under
7 RSA 399-G:23.

8 399-G:9 Continuing Obligation to Update.

9 I. No licensee shall engage in the business of money transmission under a trade or other name
10 that is different from the name stated in its principal office license without immediately notifying the
11 commissioner, who shall then amend the license and any registrations accordingly.

12 II. (a) A licensee shall submit written notification to the department of the addition or deletion
13 of a principal, and shall provide the name and address of each new principal no later than 30 days after
14 such change.

15 (b) Each new principal shall authorize the commissioner to conduct a background check.

16 (c) The commissioner shall investigate management and ownership changes including, but
17 not limited to, each principal's qualifications and business history.

18 (d) Prior to the commissioner's approval of such change of a principal, the licensee shall
19 disclose any injunction or administrative order that has been issued against the principal and
20 whether the principal has been convicted of a misdemeanor involving financial services or a financial
21 services-related business, or any fraud, false statements or omissions, theft or any wrongful taking of
22 property, bribery, perjury, forgery, counterfeiting, or extortion, or a conspiracy to commit any of
23 these offenses, or convicted of any felony.

24 III. Licensees shall provide written notice to the department of any change in location or
25 closing of any office no later than 30 business days following the effective date of such change of
26 location or closing. In the case of an emergency, as determined by the commissioner, a licensee may
27 close a registered authorized delegate office and provide notice of the closure to the department within
28 2 business days. Failure to comply with the provisions of this paragraph shall be sufficient cause for
29 license revocation or denial of license renewal applications.

30 IV. Persons licensed under this chapter are under a continuing obligation to update
31 information on file with the commissioner. If any information filed with the commissioner becomes
32 materially inaccurate, the licensee shall promptly submit to the commissioner an amendment to its
33 application that will correct the information on file with the commissioner. An amendment shall be
34 considered filed promptly if the amendment is filed within 30 days after the event that requires the
35 filing of the amendment.

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1 V. As defined by rule, certain significant events shall be reported to the department in writing
2 within 10 calendar days.

3 VI. Any officer, owner, manager, or agent of any licensee, and any person controlling or having
4 a contract under which he or she has a right to control such a licensee, whether exclusively or
5 otherwise, and any person with executive authority over or in charge of any segment of such a
6 licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry
7 from the commissioner requesting a reply. The commissioner may require that any communication
8 made to him or her under this section be verified.

9 399-G:10 Reporting and Filing Requirements.

10 I. Each licensee shall file, under oath, an annual report with the banking department on or
11 before March 31 each year concerning operations for the preceding year or license period ending
12 December 31 upon the form prescribed by the department.

13 II. Each licensee shall file, under oath, its financial statement with the commissioner within
14 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance
15 with generally accepted accounting principles with appropriate note disclosures and, unless excepted
16 by an order from the commissioner for hardship reasons, shall be audited by an independent certified
17 public accountant. The financial statement shall include or be accompanied by a calculation that
18 reflects the fiscal year's average daily outstanding money transmissions as defined by RSA 399-G:1, IV
19 in United States dollars. A money transmitter's financial statement shall include:

- 20 (a) A balance sheet;
21 (b) Income statement;
22 (c) Statement of changes in owners' equity;
23 (d) A cash flow statement; and
24 (e) A statement of net worth.

25 III. The department shall publish its analysis of the information required in the licensee's
26 annual report as a part of the commissioner's annual report.

27 IV. Any money transmitter failing to file either the annual report or the financial statement
28 required by this section within the time prescribed may be required to pay to the banking department
29 a penalty of \$25 for each calendar day the annual report or financial statement is overdue up to a
30 maximum penalty of \$2,500 per report or statement.

31 V. In addition to the annual report and financial statement, the banking department may
32 require such additional regular or special reports as it may deem necessary for the proper supervision
33 of licensees under this chapter.

34 VI. A document is filed when it is received by the commissioner. Electronic filings, when
35 received by the commissioner, are:

- 36 (a) Deemed filed;

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1 (b) Prima facie evidence that a filing has been duly authorized and made by the signatory
2 on the application or document;

3 (c) Admissible in any civil or administrative proceeding under this chapter; and

4 (d) Admissible in evidence in accordance with the rules of a superior court in any action
5 brought by the attorney general under this chapter.

6 VII. Examination fees and expenses, fines, penalties, and other moneys owed the department
7 shall be paid within 14 days of receipt of notice by the licensee or at such later time as the
8 commissioner prescribes by rule.

9 399-G:11 Record Keeping Requirements.

10 I.(a) The licensee shall maintain such records as will enable the department to determine
11 whether the licensee's business is in compliance with the provisions of this chapter and the rules
12 adopted pursuant to this chapter. Such records shall be maintained for a period of at least 5 years or
13 longer if the commissioner prescribes a period by rule and made available for examination at the
14 licensee's principal office, or its authorized delegate location, or the office of its New Hampshire
15 registered agent. Licensees may maintain electronic, photocopied, microfilm, or microfiche copies of
16 original documents.

17 (b) A licensee may maintain its records in electronic format if, upon request, the licensee
18 provides the commissioner with:

19 (1) A full explanation of the programming of any data storage or communications
20 systems in use; and

21 (2) Information from any books, records, electronic data processing systems,
22 computers, or any other information storage system in the form requested by the commissioner.

23 II. Those licensees that maintain their files in another state shall return the files to their
24 principal New Hampshire office, to the department, or to the office of their New Hampshire registered
25 agent for examination no later than 21 calendar days after being requested to do so by the department.
26 Such licensees are required to return all files and records no later than 21 calendar days after being
27 requested to do so by the banking department. When the commissioner requests a list of New
28 Hampshire consumers who have contracted with the licensee or other similar summary document from
29 a licensee from which to select particular files for review, the licensee shall ensure that the list is
30 received by the commissioner within 7 calendar days and return the files selected by the commissioner
31 to the commissioner within 14 calendar days to ensure compliance with the 21-day requirement.
32 Failure to provide files and documents shall subject a licensee to a fine of \$50 per day for each day after
33 21 days the files and documents are not produced. Failure to provide files and documents within 60
34 days after being requested to do so by the department, shall be sufficient cause for license revocation,
35 suspension, or denial.

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1 III. A licensee shall keep and use business records in such form and at such location as the
2 commissioner shall by rule determine. The records shall enable the commissioner to determine
3 whether the licensee is complying with the provisions of this chapter, any rules adopted under it, and
4 any other law, rule, or regulation applicable to the conduct of the business for which it is licensed
5 under this chapter. The rules may contain provisions for records to be recorded, copied, or reproduced
6 by any process which accurately reproduces or forms a durable medium for reproducing the original
7 record or document, or in any other form or manner authorized by the commissioner. Each licensee
8 shall preserve all such business records for as long a period as the commissioner shall prescribe by
9 rule.

10 IV. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or
11 posted in a manner not in accordance with generally accepted accounting principles, the commissioner
12 may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person being
13 examined if such person has failed to maintain, complete, or correct such records or accounting after
14 the commissioner or examiner has given him or her written notice and a reasonable opportunity to do
15 so.

16 399-G:12 Consumer Inquiries.

17 I. Consumer complaints naming licensees under this chapter, which are filed in writing with
18 the office of the commissioner, shall be forwarded via certified or registered mail to the licensee for
19 response within 10 days of receipt by the department. Licensees shall, within 30 days after receipt of
20 such complaint, send a written acknowledgment thereof to the consumer and the department. Not
21 later than 60 days following receipt of such complaint, the licensee shall conduct an investigation of the
22 complaint and either:

23 (a) Make appropriate corrections in the account of the consumer and transmit to the
24 consumer and the department written notification of such corrections, including documentary evidence
25 thereof; or

26 (b) Transmit a written explanation or clarification to the consumer and the department
27 which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct,
28 including copies of documentary evidence thereof.

29 II. A licensee who fails to respond to consumer complaints as required by this section within
30 the time prescribed shall pay to the commissioner a penalty of \$50 for each day such response is
31 overdue. For purposes of this section, the date of transmission shall be the date such response is
32 received by the commissioner.

33 III.(a) Licensees which, because of extenuating circumstances beyond the control of the
34 licensee, are unable to comply with the time frames prescribed in this section, may make written
35 request to the commissioner for a waiver of such time frames. Waivers shall not be granted or
36 considered unless the request for the waiver:

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1 (1) Is received by the department within 50 days following the licensee's receipt of the
2 complaint;

3 (2) Specifies the reason for the request; and

4 (3) Specifies a date certain by which the licensee shall comply with the provisions of
5 this section.

6 (b) Requests for waivers shall be either granted or denied within 5 days of receipt by the
7 department.

8 399-G:13 Examinations and Investigations.

9 I. The department may examine during business hours the business affairs and records of
10 any licensee, any authorized delegate, or any other person, whether licensed or not, as it deems
11 necessary to determine compliance with this chapter and the rules or orders adopted under this
12 chapter. The department shall have the power to subpoena witnesses and administer oaths in any
13 adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books,
14 records, files, and other documents and materials relevant to its investigation.

15 II. The department may examine, under oath, all persons whose testimony it may require
16 relative to transactions or business.

17 III. The affairs and records of every licensee shall be subject at any time to such periodic,
18 special, regular, or other examination by the department with or without notice to the licensee. All
19 books, papers, files, related material, and records of assets of the licensee shall be subject to the
20 department's examination.

21 IV. Any agent of the department may make a thorough examination into the business affairs
22 of each licensee and shall report any violations of law, rule, order, or standard business practice to the
23 department.

24 V. The expense of examination shall be chargeable to and paid by the licensee. The payment
25 shall be calculated by the same method as for payments by institutions for cost of examinations under
26 RSA 383:11, except when the principal office of the licensee or person is located outside of this state
27 and the department has determined that the examination must be conducted at that out-of-state
28 location, the actual cost of travel, lodging, meals, and other expenses of examination personnel
29 employed in making examinations shall be chargeable to and paid by such licensee or person in
30 addition to the per diem charge for examination personnel set forth in RSA 383:11.

31 VI. The commissioner may, in his or her discretion, accept all or a part of a report of
32 examination of a money transmitter, certified to by the regulatory supervisory official of another state.
33 To avoid unnecessary duplication of examinations, the commissioner, insofar as he or she deems it
34 practicable in administering this section, may cooperate with the regulators of other states, the Federal
35 Trade Commission, other federal regulators, or their successors in conducting examinations and
36 investigations.

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1 VII. Every person being examined, and all of the officers, directors, employees, agents, and
2 representatives of such person shall make freely available to the commissioner or his or her examiners,
3 the accounts, records, documents, files, information, assets, and matters in their possession or control
4 relating to the subject of the examination and shall facilitate the examination.

5 VIII. Upon receipt of a written report of examination, the licensee shall have 30 days or such
6 additional period as the commissioner for good cause may allow, to review the report, recommend any
7 changes, and set forth in writing the remedial course of action the licensee will pursue to correct any
8 reported deficiencies outlined in the report.

9 IX. If requested by the person examined, within the period allowed in paragraph VIII, or if
10 deemed advisable by the commissioner without such request, the commissioner shall hold a closed
11 hearing relative to the report and shall not file the report in the department until after such closed
12 hearing and issuance of his or her order thereon. If no such closed hearing has been requested or held,
13 the examination report, with such modifications as the commissioner deems proper, shall be accepted
14 by the commissioner and filed upon expiration of the review period provided for in paragraph VIII.

15 X. All reports pursuant to this section shall be privileged and exempt from the requirements of
16 RSA 91-A. The comments and recommendations of the examiner shall also be exempt.

17 XI. The commissioner may share information with state and federal regulators, and may share
18 information with law enforcement agencies for the purposes of criminal investigations.

19 XII. The commissioner may require books and records to be translated into English and may
20 require an interpreter to facilitate an examination at the expense of the licensee or registrant.

21 399-G:14 Prohibitions.

22 I. It is unlawful for any person, in connection with the solicitation, offer, or transaction of
23 money transmission, directly or indirectly:

24 (a) To employ any device, scheme, or artifice to defraud;

25 (b) To make any untrue statement of a material fact or to omit to state a material fact
26 necessary in order to make the statements made, in light of the circumstances under which they are
27 made, not misleading; or

28 (c) To engage in any act, practice, or course of business which operates or would operate as
29 a fraud or deceit upon any person.

30 II. It is unlawful for any person to make or cause to be made in any document filed under this
31 chapter or in any proceeding under this chapter:

32 (a) Any statement which is, at the time and in the light of the circumstances under which
33 it is made, false or misleading in any material respect; or

34 (b) In connection with such statement, to omit to state a material fact necessary in order to
35 make the statements made, in light of the circumstances under which they are made, not misleading.

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1 399-G:15 Oversight of Authorized Delegates. Licensees shall implement a system of education,
2 training, monitoring, and periodic inspection designed to inform their authorized delegates of their
3 responsibilities, consistent with the Bank Secrecy Act and the requirements to file reports required by
4 federal law. Licensees whose authorized delegates are not required to register independently with
5 FinCEN shall ensure that such authorized delegates have adequate written policies and procedures in
6 place to implement effective Bank Secrecy Act and anti-money laundering programs.

7 399-G:16 Net Worth Requirements. An applicant or licensee shall at all times maintain a net
8 worth of the lesser of its average daily outstanding money transmissions for the prior calendar year or
9 \$1,000,000.

10 399-G:17 Money Laundering Reports and Federal Law Compliance.

11 I. Licensees shall create, implement, and file with the commissioner written plans for
12 compliance with federal laws, including but not limited to the Bank Secrecy Act of 1970 as amended,
13 and regulations, 31 U.S.C. section 5313, 31 C.F.R. part 1010, and other federal and state laws
14 pertaining to currency reporting, recordkeeping, suspicious activity reporting, and money laundering
15 with regards to money transmission transactions in this state.

16 II. The timely filing with the appropriate federal agency of a complete and accurate report
17 required by paragraph I complies with the requirements of this section, unless the commissioner
18 notifies the licensee that reports of this type are not being regularly and comprehensively transmitted
19 by the federal agency to the commissioner.

20 399-G:18 Advertising. No person shall advertise, print, display, publish, distribute, or broadcast,
21 or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any
22 statement or representation with regard to the rates, terms, or conditions for money transmission
23 under the provisions of this chapter which is false, misleading, or deceptive.

24 399-G:19 Transmission and Refunds.

25 I. Money transmitters shall be liable to customers for the amount of the money or monetary
26 value as well as any fees paid by the customer and received by the money transmitter, authorized
27 delegate, or person acting on his or her behalf, if the monetary value fails to reach its intended
28 recipient unless transmission to the recipient is prohibited by law.

29 II. If an intended recipient of a money transmission fails to accept or retrieve the monetary
30 value transmitted, unless otherwise instructed by his or her customer, a licensee's responsibility to any
31 person for a money transmission conducted on that person's behalf by the licensee's authorized
32 delegate shall be limited to the amount of the monetary value transmitted.

33 399-G:20 License Revocation; Suspension; Penalties.

34 I. The commissioner may issue an order requiring a person to whom any license has been
35 granted or any person under the commissioner's jurisdiction to show cause why the license should not
36 be revoked, or suspended, or penalties imposed, or both, for violations of this chapter.

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1 II.(a) The order shall give reasonable notice of the opportunity for a hearing and shall state the
2 reasons for the issuance of the order.

3 (b) The commissioner may by order summarily postpone or suspend any license or
4 application pending final determination of any order to show cause, or other order, or of any other
5 proceeding under this section, provided the commissioner finds that the public interest would be
6 irreparably harmed by delay in issuing such order.

7 (c) Upon the entry of the order, the commissioner shall promptly notify the respondent,
8 applicant, or licensee that the order has been entered and of the reasons for the order and that within
9 10 calendar days after receipt of a written request the matter will be scheduled for hearing.

10 (d) Valid delivery of such order shall be by hand or certified mail at the last known
11 principal office of the licensee, or respondent, to an officer, director, 5 percent or more owner, member,
12 partner, or legal representative of the licensee or respondent.

13 (e) If the person to whom an order to show cause or other order is issued fails to request a
14 hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by
15 the commissioner, then such person shall be deemed in default, and the order shall, on the thirty-first
16 day, become permanent, and shall remain in full force and effect until and unless later modified or
17 vacated by the commissioner, for good cause shown.

18 (f) A hearing, if requested, shall be scheduled not later than 10 calendar days after the
19 written request for such hearing is received by the commissioner, after which and within 20 calendar
20 days from the date of the hearing the commissioner shall enter an order making such disposition of the
21 matter as the facts require.

22 (g) If the licensee or respondent fails to request a hearing within 30 calendar days of
23 receipt or valid delivery of such order or fails to appear at a hearing after being duly notified, or cannot
24 be located after a reasonable search, such person shall be deemed in default and the proceeding may be
25 decided against the person upon consideration of the order to show cause or other order, the allegations
26 of which may be deemed to be true.

27 III. The commissioner may by order, upon due notice and opportunity for hearing, assess
28 penalties and deny, suspend, or revoke a license, registration, or application, and bar any person from
29 licensure if it is in the public interest and the applicant, respondent, authorized delegate, or licensee,
30 any partner, officer, member, or director, any person occupying a similar status or performing similar
31 functions, or any person directly or indirectly controlling the applicant, respondent, authorized
32 delegate, or licensee:

33 (a) Has violated any provision of this chapter or rules adopted under this chapter;

34 (b) Has not met the standards established in this chapter;

35 (c) Has filed an application for licensing which as of its effective date, or as of any date
36 after filing in the case of an order denying effectiveness, was incomplete in any material respect or

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1 contained any statement which was, in light of the circumstances under which it was made, false or
2 misleading with respect to any material fact;

3 (d) Has made a false or misleading statement to the commissioner or in any reports to the
4 commissioner;

5 (e) Has made fraudulent misrepresentations, has circumvented or concealed, through
6 whatever subterfuge or device, any of the material particulars or the nature thereof required to be
7 stated or furnished to a consumer under the provisions of this chapter;

8 (f) Is the subject of an order entered within the past 5 years by this state, any other state,
9 or federal regulator denying, suspending, or revoking licenses or registration;

10 (g) Is permanently, preliminarily, or temporarily enjoined by any court of competent
11 jurisdiction from engaging in or continuing any conduct or practice involving any aspect of money
12 transmission, lending, or collection activities;

13 (h) Is not qualified on the basis of such factors as experience, knowledge, and financial
14 integrity;

15 (i) Has engaged in dishonest or unethical practices in the conduct of the business of money
16 transmission;

17 (j) Has violated applicable federal laws or rules thereunder;

18 (k) Has made an unsworn falsification under RSA 641:3 to the commissioner; or

19 (l) For other good cause shown.

20 IV. The banking department may, upon due notice and opportunity for a hearing, suspend any
21 license for a period not exceeding 30 days, pending investigation by the banking department.

22 V. Any license revocation, license suspension, or unfavorable action by the banking
23 department on a license shall further comply with the provisions of RSA 541-A:30.

24 VI. The banking department may take action for immediate suspension of a license, pursuant
25 to RSA 541-A:30, III.

26 VII. If a licensee is a partnership, association, corporation, or entity however organized, it
27 shall be sufficient cause for the suspension or revocation of a license that any officer, director, or
28 trustee of a licensed association or corporation or any member of a licensed partnership has so acted or
29 failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such
30 party as an individual.

31 VIII. If the commissioner finds that any licensee or applicant for license is no longer in
32 existence or has ceased to do business as a money transmitter, or cannot be located after reasonable
33 search, the commissioner may by order revoke the license, and impose penalties, or deny the
34 application.

35 399-G:21 Cease and Desist.

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1 I. The department may issue a cease and desist order against any person who it has
2 reasonable cause to believe is in violation of the provisions of this chapter or any rule or order under
3 this chapter.

4 II.(a) Delivery of such order shall be by hand or certified mail at the principal office of the
5 person.

6 (b) The order shall be calculated to give reasonable notice of the rights of the person to
7 request a hearing on the order and shall state the reasons for the entry of the order.

8 (c) A hearing shall be held not later than 10 days after the request for such hearing is
9 received by the commissioner.

10 (d) Within 20 days of the date of the hearing the commissioner shall issue a further order
11 vacating the cease and desist order or making it permanent. All hearings shall comply with
12 RSA 541-A.

13 (e) If the person to whom a cease and desist order is issued fails to appear at the hearing
14 after being duly notified, such person shall be deemed in default, and the proceeding may be
15 determined against him or her upon consideration of the cease and desist order, the allegations of
16 which may be deemed to be true.

17 (f) If the person to whom a cease and desist order is issued fails to request a hearing
18 within 30 calendar days of receipt of such order, then such person shall likewise be deemed in default,
19 and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect
20 until and unless later modified or vacated by the commissioner, for good cause shown.

21 III. If any person refuses to obey the commissioner's order, an action may be brought by the
22 attorney general on the commissioner's behalf in any superior court in this state to enjoin such person
23 from engaging in or continuing such violation or from doing any act or acts in furtherance of such
24 violation. In any such action, an order or judgment may be entered awarding a temporary or
25 permanent injunction, and awarding the commissioner or the attorney general or both costs in
26 bringing such action. The court shall have the power to enforce obedience to such injunction, in
27 addition to all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or
28 both.

29 399-G:22 Prosecution of Violations.

30 I. Any person who willfully violates any provisions of RSA 399-G:14, or a cease and desist
31 order or injunction issued pursuant to RSA 399-G:21 shall be guilty of a class B felony. Each of the
32 acts specified shall constitute a separate offense and a prosecution or conviction for any one of such
33 offenses shall not bar prosecution or conviction of any other offense.

34 II. Nothing within this chapter shall restrict the right of the attorney general to enforce the
35 provisions of RSA 358-A:2, XIII, regarding the issuance and terms of stored value cards which are gift
36 certificates as defined by RSA 358-A:1, IV-a.

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1 399-G:23 Penalty.

2 I. Any person who violates any provision of this chapter shall be guilty of a misdemeanor for
3 each violation if a natural person, or guilty of a felony for each violation if any other person.

4 II. Any person who knowingly violates any provision of this chapter, or any rule adopted under
5 this chapter or order of the commissioner may, upon notice and opportunity for hearing, except where
6 another penalty is expressly provided, be subject to license suspension or revocation, or imposition of
7 an administrative fine not to exceed \$2,500 for each violation in lieu of or in addition to suspension or
8 revocation.

9 III. Any person who negligently violates any provision of this chapter, or rule adopted under
10 this chapter or order of the commissioner may, upon notice and opportunity for hearing, except where
11 another penalty is expressly provided, be subject to license suspension, revocation, or denial, including
12 the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$1,500 for
13 each violation, in lieu of or in addition to suspension or revocation.

14 IV. Every person who directly or indirectly controls a person liable under this section, every
15 partner, principal executive officer, or director of such person, every person occupying a similar status
16 or performing a similar function, every employee of such person who materially aids in the act
17 constituting the violation, and every licensee or person acting as a common law agent who materially
18 aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and
19 opportunity for hearing, and in addition to any other penalty provided for by law, be subject to license
20 suspension, revocation, or denial, including the forfeiture of any application fee, or the imposition of an
21 administrative fine not to exceed \$2,500, or both. An administrative action or fine may be imposed in
22 addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who
23 shall sustain the burden of proof that such person did not know, and in the exercise of reasonable care
24 could not have known, of the existence of facts by reason of which the liability is alleged to exist.

25 V. The attorney general on the commissioner's behalf, may, with or without prior
26 administrative action by the commissioner, bring an action against any person in any superior court in
27 this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or
28 order under this chapter. Upon a proper showing, a permanent or temporary injunction, bar,
29 restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the
30 defendant or the defendant's assets. The court shall not require the commissioner or attorney general
31 to post a bond. The court shall have the power to enforce obedience to such injunction, in addition to
32 all of the court's customary powers, by a fine not exceeding \$10,000 or by imprisonment, or both. In a
33 proceeding in superior court under this paragraph where the state prevails, the commissioner and the
34 attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall
35 include the costs in its final judgment.

36 399-G:24 Administration by Commissioner; Rulemaking.

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1 I. The commissioner shall administer and enforce the provisions of this chapter.

2 II. Pursuant to RSA 541-A, the commissioner may adopt such rules as he or she deems
3 necessary to the administration and enforcement of this chapter. Such rules shall be consistent with
4 the provisions of this chapter, and may include, but shall not be limited to, the following:

5 (a) The application form for licensees required under RSA 399-G:4.

6 (b) The form of license issued to licensees under RSA 399-G:5.

7 (c) Annual reports required by RSA 399-G:10.

8 (d) Personal disclosure statements to meet the requirements of RSA 399-G:4.

9 (e) Fees to be charged to cover the reasonable costs of copying documents and producing
10 reports.

11 III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply
12 with the provisions of this title.

13 IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to
14 carry out the provisions of this chapter.

15 V. The commissioner may, for good cause shown, abate all or a portion of delinquency
16 penalties assessed under this chapter.

17 VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when
18 the commissioner finds such action necessary or appropriate to the public interest or for the protection
19 of consumers and consistent with the provisions of this chapter.

20 VII. In adopting rules, preparing forms, setting standards, and performing examinations,
21 investigations, and other regulatory functions authorized by the provisions of this chapter, the
22 commissioner may cooperate, and share information pursuant to confidentiality agreements, with
23 regulators in this state and with regulators in other states and with federal regulators, in order to
24 implement the policy of this chapter in an efficient and effective manner and to achieve maximum
25 uniformity in the form and content of applications, reports, and requirements for money transmitters,
26 where practicable.

27 VIII. The commissioner shall have the power to subpoena witnesses and administer oaths in
28 any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents,
29 papers, books, records, files, and other evidence, whether electronically stored or otherwise, before the
30 commissioner in any matter over which the commissioner has jurisdiction, control, or supervision
31 pertaining to the provisions of this chapter.

32 IX. The commissioner shall have the power to administer oaths and affirmation to any person
33 whose testimony is required.

34 X. The commissioner shall have the authority to set fees to be charged to cover the reasonable
35 costs of copying documents and producing reports.

36 258:2 Effective Date. This act shall take effect January 1, 2016.

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2 Approved: July 13, 2015

3 Effective Date: January 1, 2016