

Senate Bill No. 979

CHAPTER 356

An act to amend Sections 2000, 2003, 2010, 2011, 2030, 2032, 2033, 2034, 2035, 2036, 2037, 2039, 2040, 2042, 2060, 2062, 2082, 2083, 2087, 2088, 2100, 2121, 2124, 2149, 2150, 2151.1, 2152, 2153, 2171, and 2172 of, and to add Section 583 to, the Financial Code, relating to financial institutions.

[Approved by Governor September 17, 2012. Filed with
Secretary of State September 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 979, Vargas. Financial institutions.

Existing law establishes the Department of Financial Institutions in the Business, Transportation and Housing Agency and provides that the department is in charge of the execution of specified laws relating to various financial institutions and financial services.

Existing law requires the Commissioner of Financial Institutions to give public notice of specified final orders affecting the license of a licensee or foreign credit union.

This bill would require the commissioner to also post the notice of specified orders affecting a licensee or foreign credit union on the department's public Internet Web site. The bill would authorize the commissioner to delay posting the decision or order if he or she makes a finding that such a posting would affect the safety or soundness of the financial institution subject to the order or decision. This bill would also authorize the commissioner to redact certain portions of the orders posted pursuant to these provisions if he or she determines that the redaction is necessary to protect the identity of a customer of the affected institution.

This bill would also make technical changes to the Money Transmission Act.

The people of the State of California do enact as follows:

SECTION 1. Section 583 is added to the Financial Code, to read:

583. (a) The commissioner shall make public on the department's Internet Web site all final orders issued pursuant to Sections 567, 580, 581, 582, 585, 586, 587, 2148, 14303, 14304, 14305, 14307, 14308, 14309, 14310, 16200.5, 16900.5, 18349.5, 18356, 18357, 18358, 18359, 18363, 18367, and 18415.3 all decisions to modify or rescind an order pursuant to Sections 588, 14311, 16205, and 16905, all decisions to revoke or suspend a license pursuant to Sections 590, 591, 2149, 16202, 16203, 16902, 16903,

18349, and 18353, all decisions to revoke or suspend the designation of an agent pursuant to Sections 2150 and 2151, all decisions to approve resumption of business pursuant to Section 14314, and all decisions to take possession of the property and business of a licensee pursuant to Sections 592, 2149, 2150.2, 14313, 14315, 14319, 16206, 16906, 18415, and 18415.4. This public notice shall be in addition to the notice required pursuant to Section 594.

(b) If the commissioner makes a determination in writing that the publication of a final order or decision referenced in subdivision (a) would seriously threaten the safety or soundness of a regulated institution subject to that order or decision, the commissioner may delay publication of the order or decision for a reasonable time.

(c) If the commissioner makes a determination that the publication of a final order or decision referenced in subdivision (a) would reveal information which would identify a customer of the institution subject to the order, the commissioner may redact from the order, prior to publication, any information that, in the determination of the commissioner, would identify any customer of the subject institution.

SEC. 2. Section 2000 of the Financial Code is amended to read:

2000. This division shall be known and may be cited as the Money Transmission Act.

SEC. 3. Section 2003 of the Financial Code is amended to read:

2003. For purposes of this division, the following definitions shall apply:

(a) "Affiliate," when used with respect to a specified person, means any person controlling, controlled by, or under common control with, that specified person, directly or indirectly through one or more intermediaries. For purposes of subdivisions (q) and (v), a specified person is affiliated with another person if that person controls, is controlled by, or under common control through the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of that specified person.

(b) "Agent" means a person that provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person. However, "agent" does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(c) "Applicant" means a person that files an application for a license or for acquisition of control of a licensee under this division.

(d) "Average daily outstanding" means the amount of outstanding money transmission obligations in California at the end of each day in a given period of time, added together, and divided by the total number of days in that period of time.

(e) "Branch office" means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.

(f) "Business day" means one of the following:

(1) When used with respect to any act to be performed in this state, any day other than Saturday, Sunday, or any other day that is provided for as a holiday in the Government Code.

(2) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day that is a legal holiday under the laws of that jurisdiction.

(g) “Commissioner” means the Commissioner of Financial Institutions.

(h) “Control” has the meaning set forth in Section 1250.

(i) “Day” means calendar day.

(j) “In California” or “in this state” means physically located in California, or with, to, or from persons located in California.

(k) “Issue” and “issuer” mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, “issue” and “issuer” mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(l) “Licensee” means a corporation or limited liability company licensed under this division.

(m) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(n) “Money” means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(o) “Money transmission” means any of the following:

(1) Selling or issuing payment instruments.

(2) Selling or issuing stored value.

(3) Receiving money for transmission.

(p) “Outstanding,” with respect to payment instruments and stored value, means issued or sold by the licensee in the United States and not yet paid or refunded by the licensee, or issued or sold on behalf of the licensee in the United States by its agent and reported as sold, but not yet paid or refunded by the licensee. “Outstanding,” with respect to receiving money for transmission means all money or monetary value received in the United States for transmission by the licensee or its agents but not yet paid to the beneficiaries or refunded to the person from whom the money or monetary value was received. All outstanding money transmission of a licensee is and shall remain a liability of the licensee until it is no longer outstanding.

(q) “Payment instrument” means a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.

(r) “Person” means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability company, association, joint venture, government, governmental subdivision, agency or

instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity, provided, however, that “person,” when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.

(s) “Receiving money for transmission” or “money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value.

(t) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(u) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(v) “Stored value” means monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(w) “Traveler’s check” means an instrument that meets all of the following:

(1) Is designated on its face by the term “traveler’s check” or by any substantially similar term or is commonly known and marketed as a traveler’s check.

(2) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase.

(3) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

SEC. 4. Section 2010 of the Financial Code is amended to read:

2010. This division does not apply to the following:

(a) The United States or a department, agency, or instrumentality thereof, including any federal reserve bank and any federal home loan bank.

(b) Money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service.

(c) A state, county, city, or any other governmental agency or governmental subdivision of a state.

(d) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank that is licensed under Article 3 (commencing with Section 1800) of Chapter 20 or that is authorized under federal law to maintain a federal agency or federal branch office in this state; a trust company licensed pursuant to Section 1042 or a national association authorized under federal law to engage in a trust banking business; an

association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor; and any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

(f) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

(g) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from registration granted under the federal securities laws to the extent of its operation as such a provider.

(h) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider.

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

(j) A person listed under subdivision (d) is exempted from all the provisions of this division, except Sections 2062 and 2063.

SEC. 5. Section 2011 of the Financial Code is amended to read:

2011. The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this division any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

SEC. 6. Section 2030 of the Financial Code is amended to read:

2030. (a) A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division or is an agent of a person licensed or exempt from licensure under this division.

(b) A license under this division is not transferable or assignable.

SEC. 7. Section 2032 of the Financial Code is amended to read:

2032. (a) In this section, “material litigation” means litigation that according to United States generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.

(b) An applicant for licensure under this division shall pay to the commissioner a nonrefundable fee of five thousand dollars (\$5,000).

(c) An applicant for a license under this division shall do so in a form and in a medium prescribed by the commissioner by order or regulation. The application shall state or contain all of the following:

(1) The legal name and residential business address of the applicant and any fictitious or trade name used by the applicant in conducting its business.

(2) A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application.

(3) A description of any money transmission services previously provided by the applicant and the money transmission services that the applicant seeks to provide in this state.

(4) A list of the applicant's proposed agents and the locations in this state where the applicant and its agents propose to engage in money transmission.

(5) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

(6) Information concerning any bankruptcy or receivership proceedings affecting the licensee.

(7) A sample form of payment instrument or instrument upon which stored value is recorded, if applicable.

(8) A sample form of receipt for transactions that involve money received for transmission.

(9) The name and address of any bank through which the applicant's payment instruments and stored value will be paid.

(10) A description of the source of money and credit to be used by the applicant to provide money transmission services.

(11) The date of the applicant's incorporation or formation and the state or country of incorporation or formation.

(12) A certificate of good standing from the state or country in which the applicant is incorporated or formed.

(13) A description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

(14) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application, of each executive officer, manager, director, or person that has control, of the applicant, and the education background for each such person.

(15) A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control, of the applicant has been involved in the 10-year period next preceding the submission of the application.

(16) A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

(17) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

(18) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m).

(19) If the applicant is a wholly owned subsidiary of:

(A) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m) and, if available, for the two-year period next preceding the submission of the application.

(B) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

(20) The name and address of the applicant's registered agent in this state.

(21) The applicant's plan for engaging in money transmission business, including without limitation three years of pro forma financial statements.

(22) Any other information the commissioner requires with respect to the applicant.

(d) The commissioner may waive any of the information required under subdivision (c) or permit an applicant to submit other information instead of the required information.

SEC. 8. Section 2033 of the Financial Code is amended to read:

2033. (a) The commissioner may conduct an examination of the applicant and the applicant shall pay the reasonable cost of the examination.

(b) If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

(1) The applicant has adequate tangible shareholders' equity, as specified in Section 2040 to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of money transmission.

(2) The applicant, the directors and officers of the applicant, any person that controls the applicant, and the directors and officers of any person that controls the applicant are of good character and sound financial standing.

(3) The applicant is competent to engage in the business of money transmission.

(4) The applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation.

(5) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(c) The commissioner shall deny an application for a license if he or she finds, after notice and a hearing, that the requirements of subdivision (b) have not been satisfied.

SEC. 9. Section 2034 of the Financial Code is amended to read:

2034. (a) Before any corporation or limited liability company is issued a license, the corporation or limited liability company shall file with the commissioner, in such form as the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner to be the corporation's or limited liability company's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the corporation or limited liability company, or any of its successors, that arises under this division or under any regulation or order issued under this division after such appointment has been filed, with the same force and validity as if served personally on the corporation or limited liability company or its successor, as the case may be.

(b) Service may be made by leaving a copy of the process at any office of the commissioner, but that service is not effective unless (1) the party making that service, who may be the commissioner, sends notice of service and a copy of the process by registered or certified mail to the party served at its last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(c) The provisions of this section are in addition to, and not in limitation of, other provisions of law relating to service of process.

SEC. 10. Section 2035 of the Financial Code is amended to read:

2035. (a) No person shall, directly or indirectly, acquire control of a licensee unless the commissioner has first approved, in writing, the acquisition of control. An application to acquire control of a licensee shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(b) The commissioner shall not approve the application unless the commissioner finds all of the following:

(1) The applicant and all of the officers and directors of the applicant are of good character and sound financial standing.

(2) The applicant is competent to engage in the business of money transmission.

(3) It is reasonable to believe that, if the applicant acquires control of the licensee, the applicant and the licensee will comply with all applicable provisions of this division and any regulation or order issued under this division.

(4) The applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(c) For the purposes of subdivision (b), the commissioner may find an applicant's plan to make major changes in the management of a licensee is detrimental to the licensee if the plan provides for a person who is not of good character to become a director or officer of the licensee. The grounds specified in this subdivision shall not be deemed to be the only grounds upon which the commissioner may find, for the purposes of subdivision (b), that an applicant's plan to make a major change in the management of a licensee is detrimental to the licensee.

(d) If it appears to the commissioner that any person is violating or failing to comply with this section, the commissioner may direct the person to comply with this section by an order issued over the commissioner's official seal.

(e) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this section or of any regulation or order of the commissioner issued pursuant to this section, the commissioner may apply to the superior court for an order enjoining the person from violating or continuing to violate this section or that regulation or order, and for other equitable relief as the nature of the case or interests of the licensee, the controlling person, the creditors or shareholders of the licensee or controlling person or the public may require.

(f) The commissioner may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a licensee issued pursuant to this section.

(g) There shall be exempted from the provisions of this section any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this section and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of a licensee or the customers of a licensee.

(h) The commissioner may conduct an examination of the applicant and the applicant shall pay the reasonable cost of the examination.

SEC. 11. Section 2036 of the Financial Code is amended to read:

2036. The commissioner may impose on any authorization, approval, license, or order issued pursuant to this division any conditions that he or she deems reasonable or necessary to the public interest.

SEC. 12. Section 2037 of the Financial Code is amended to read:

2037. (a) As security, each licensee shall deposit and thereafter maintain on deposit with the Treasurer cash in an amount not less than, or securities having a market value not less than, such amount as the commissioner may find and order from time to time as necessary to secure the faithful performance of the obligations of the licensee with respect to money transmission in California. These securities shall be subject to the approval of the commissioner and shall consist of interest-bearing bonds, notes, or other obligations of the United States or any agency or instrumentality thereof, or of the State of California, or of any city, county, or city and county, political subdivision or district of the State of California, or that are guaranteed by the United States or the State of California.

(b) So long as a licensee that maintains securities on deposit with the Treasurer pursuant to this section is solvent, that licensee shall be entitled to receive any interest paid on the securities.

(c) In lieu of the deposit of cash or securities pursuant to subdivision (a), a licensee may deliver to the commissioner the bond of a surety company, in form and written by a company satisfactory to the commissioner, in an amount not less than the amount of the deposit of cash or securities required of the licensee, conditioned upon the faithful performance of the obligations of the licensee with respect to money transmission in California. The commissioner shall deposit such bond with the Treasurer.

(d) A licensee that sells or issues payment instruments or stored value shall maintain securities on deposit or a bond of a surety company in an amount of no less than five hundred thousand dollars (\$500,000) or 50 percent of the average daily outstanding payment instrument and stored value obligations in California, whichever is greater; provided that such amount shall not be more than two million dollars (\$2,000,000).

(e) A licensee that engages in receiving money for transmission shall maintain securities on deposit or a bond of a surety company in an amount greater than the average daily outstanding obligations for money received for transmission in California, provided that such amount shall not be less than two hundred fifty thousand dollars (\$250,000) nor more than seven million dollars (\$7,000,000).

(f) The amount of securities on deposit or a bond of a surety company required to be maintained by subdivisions (d) and (e) are cumulative.

(g) The money and securities deposited with the Treasurer pursuant to this section and the proceeds of any bond held by the Treasurer pursuant to this section shall constitute a trust fund for the benefit of persons in California who purchased payment instruments or stored value from the licensee or its agent, or persons in California who delivered to any licensee or its agent money or monetary value for money transmission. Suit to recover on any bond may be brought by any party aggrieved in a court of competent jurisdiction of any county in which the licensee has an agent.

(h) Securities on deposit or a bond shall cover claims for so long as the commissioner specifies, but for at least four years after the licensee ceases to provide services under this division in this state. However, the commissioner may permit the amount of the security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored value obligations outstanding, or outstanding money or monetary value received for money transmission, is less than the deposit or bond. The commissioner may permit a licensee to substitute another form of security acceptable to the commissioner for the security effective at the time the licensee ceases to provide money transmissions in this state.

SEC. 13. Section 2039 of the Financial Code is amended to read:

2039. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary or may be duplicative.

(b) In addition to such other reports as may be required pursuant to Sections 453, 454, and 455, each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year that shall comply with all of the following provisions:

(1) The audit report shall contain audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with United States generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the licensee conducted in accordance with United States generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(c) Each licensee shall, not more than 45 days after the end of each calendar year quarter, or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cashflows, for, or as of the end of, that calendar year quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) For issuers and sellers of payment instruments and stored value, a schedule of eligible securities owned by the licensee pursuant to Section 2081.

(3) Other information as the commissioner may by regulation or order require.

(d) Each licensee, not more than 45 days after the end of each calendar year quarter, shall file with the commissioner a report containing all of the following:

(1) The current address of each branch office of the licensee in this state. If a branch office was opened or closed during the calendar year quarter, the date it was opened or closed. If a branch office was relocated during the calendar year quarter, the addresses of the old and new locations and the date of relocation.

(2) The name of each person who acted as an agent in this state of the licensee during the calendar year quarter and the address for each agent branch office. If a person was appointed or terminated as an agent during the calendar year quarter, the date of appointment or termination. If an agent branch office relocated, the addresses for the old and new locations and the date of relocation.

(3) The total volume of activities, number of transactions conducted, and outstanding money transmission obligations in California under this division and in the United States in the calendar year quarter categorized by type of money transmission. For money received for transmission, a report of the average daily outstanding transmission liabilities in California, and, if applicable, a schedule of each foreign country to which money was sent, along with the total amount of money sent to that foreign country in that calendar year quarter. For payment instruments and stored value, a report of the average daily outstanding payment instruments and stored value liabilities in California in that calendar year quarter.

(4) Other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner other reports as and when the commissioner may by regulation or order require.

SEC. 14. Section 2040 of the Financial Code is amended to read:

2040. (a) A licensee under this division shall maintain tangible shareholders' equity in an amount determined to be adequate by the commissioner from time to time, but in no event shall tangible shareholders' equity be less than five hundred thousand dollars (\$500,000). "Tangible shareholders' equity" means shareholders' or members' equity minus intangible assets as determined in accordance with United States generally accepted accounting principles.

(b) The commissioner at any time may require a licensee to write down any asset held by it to a valuation that will represent its then fair market value. Any receivable or debt due to a licensee that is past due and unpaid for the period of one year shall be charged off, unless it is well secured or is in process of collection.

(c) The aggregate value of a licensee's accounts receivable, excluding money transmission receivables, loans or extensions of credit to any one person, or that person's affiliates, cannot exceed 50 percent of the licensee's tangible shareholders' equity without the advanced written approval of the commissioner. Whenever such amount equals or exceeds 20 percent of the licensee's tangible shareholders' equity, the licensee shall maintain records evidencing such amount and any security or other source of payment for the amount owed, and such other records as the commissioner may require by order or regulation.

SEC. 15. Section 2042 of the Financial Code is amended to read:

2042. (a) In addition to the fees provided in Section 2038, the commissioner shall levy an assessment each fiscal year, on a pro rata basis, on those licensees that at any time during the preceding calendar year engaged in the business of money transmission in California in an amount

that is, in his or her judgment, sufficient to meet the commissioner’s expenses in administering the provisions of this division and to provide a reasonable reserve for contingencies.

(b) For licensees that sell or issue payment instruments or stored value, the amount of the annual assessment on any licensee shall not exceed the sum of the products determined by multiplying (1) increments of the aggregate face amount of payment instruments and stored value issued or sold in California by the licensee, directly or indirectly through agents, in the calendar year next preceding the date of such assessment, by (2) percentages of the base assessment rate, according to the following table:

| Aggregate face amount of payment instruments and stored value sold (in millions) | Percentage of base assessment rate |
|----------------------------------------------------------------------------------|------------------------------------|
| First \$1..... | 100.0 |
| Next \$9..... | 25.0 |
| Next \$40..... | 12.5 |
| Next \$50..... | 6.0 |
| Next \$400..... | 3 |
| Next \$500..... | 2 |
| Excess over \$1,000..... | 1 |

The base assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar (\$1) per one thousand dollars (\$1,000) face amount of payment instruments and stored value sold.

(c) For licensees receiving money for transmission, the basis of the apportionment of the assessment among the licensees assessed shall be the proportion that the total amount of money received for transmission by the licensee in California bears in relation to the total amount of money received for transmission by all licensees in California, as shown by the reports of licensees to the commissioner for the preceding calendar year. The assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar (\$1) per one thousand dollars (\$1,000) of money received for transmission in California by the licensee.

(d) The commissioner shall notify each licensee by mail of the amount levied against it. The licensee shall pay the amount levied within 20 days. If payment is not made to the commissioner within that time, the commissioner shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent.

SEC. 16. Section 2060 of the Financial Code is amended to read:

2060. (a) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) No licensee shall appoint or continue any person as agent, unless the licensee and the person have made a written contract. A written contract between a licensee and an agent shall require the agent to operate in full compliance with this division.

- (c) The written contract shall contain each of the following provisions:
- (1) That the licensee appoints the person as its agent with authority to conduct money transmission on behalf of the licensee.
 - (2) That the agent shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the commissioner by regulation or order requires and preserve the records for the time specified by the regulation or order.
 - (3) That all money or monetary value, less fees due agents provided for and expressly set forth in the written agreement, received by the agent for money transmission on behalf of the licensee shall be trust funds owned by and belonging to the licensee until the time when the money or an equivalent amount are remitted by the agent to the licensee in accordance with this section.
 - (4) That the money must be remitted in accordance with the provisions of this division.
 - (5) Any other provisions that the commissioner may by regulation or order find to be necessary to carry out the provisions and purposes of this division.
- (d) An agent shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the agent.
- (e) An agent of a licensee shall remit any money, less fees, received on behalf of the licensee for money transmission as follows:
- (1) Within three business days of receipt.
 - (2) In case the aggregate face amount of the money, less fees, does not in any calendar week exceed ten thousand dollars (\$10,000), within 10 business days of receipt.
 - (3) Within a period longer than three business days of receipt, if the agent has previously deposited with, and during such period maintains on deposit with, an office of an insured bank or of an insured savings and loan association located in the United States in an account that is in the sole and exclusive name of the licensee an amount that, for each day by which such period exceeds three business days, is not less than the aggregate face amount of money received on behalf of the licensee for money transmission that the agent usually sells per day.
 - (4) Within such shorter period as the licensee may provide.
- (f) An agent may not provide money transmission outside the scope of activity permissible under the contract between the agent and the licensee. All money or monetary value, less fees, received by an agent of a licensee shall, from the time when the money is received by the agent until the time when the money or an equivalent amount is remitted by the agent to the licensee, constitute trust funds owned by and belonging to the licensee.
- (g) An agent may not use a subagent to conduct money transmissions on behalf of a licensee.
- (h) Each licensee shall exercise reasonable supervision over its agents to ensure compliance with applicable laws, rules, and regulations with respect to money transmission.

(i) No agent of a licensee shall, nor shall any licensee cause or knowingly permit any of its agents to, conduct money transmission on behalf of the licensee without concurrently receiving money, monetary value or its equivalent, credit card, or payment instrument, or a combination of same believed to be valid in an amount not less than the amount of the money transmission being provided. In the case of a sale of payment instruments or stored value to an insured bank, an insured savings and loan association, or an insured credit union, the licensee or agents of the licensee may receive such amounts the next business day after the sale.

(j) If any agent of a licensee shall commingle any money or monetary value, less fees, received on behalf of the licensee for money transmission with any other property owned or controlled by the agent, all such property shall be impressed with a trust in favor of the licensee in an amount equal to the aggregate amount of such money so commingled. No money or monetary value, less fees, received by any agent on behalf of the licensee for money transmission, while held by such agent, nor any property impressed with a trust pursuant to this subdivision, shall be subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee.

(k) Each licensee shall be liable as a principal for the money or monetary value from the time when the money or monetary value is received by the agent. Each licensee shall be liable as the maker or drawer on each payment instrument issued or sold by such licensee.

SEC. 17. Section 2062 of the Financial Code is amended to read:

2062. A person may not provide money transmissions on behalf of a person not licensed or not exempt from licensure under this division. A person that engages in that activity provides money transmissions services to the same extent as if the person was a licensee, and shall be jointly and severally liable with the unlicensed or nonexempt person.

SEC. 18. Section 2082 of the Financial Code is amended to read:

2082. (a) “Eligible security” means any United States currency eligible security or foreign currency eligible security.

(b) For the purposes of this division, the following are United States currency eligible securities:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association or insured credit union.

(3) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States.

(4) Any bond, note, or other obligation that is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and that is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance that is eligible for discount by a federal reserve bank.

(6) Any commercial paper that is assigned an eligible rating by an eligible rating securities service.

(7) Any bond, note, or other obligation that is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. 270.2a-7).

For purposes of this paragraph and paragraph (9), “investment company,” “management company,” and “open-end” have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4 and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities that comply with valuation requirements of this division.

(10) Any account due to any licensee from any agent in the United States on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

(c) “Foreign currency eligible security” means any of the following that is denominated in a foreign currency:

(1) Cash.

(2) Any deposit in an office of a bank acceptable to the commissioner that is located in a foreign country.

(3) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 2086.

(d) For the purposes of this division, “value” means the following:

(1) When used with respect to an eligible security owned by a licensee of the type described in paragraph (10) of subdivision (b), net carrying value as determined in conformity with United States generally accepted accounting principles. However, in computing the value of the account, any amount that consists of money that has not been remitted to the licensee or refunded within 45 business days of receipt by the agent shall be excluded from the value of the account and shall be excluded from the calculation of eligible securities.

(2) Market value when used with respect to any other eligible security owned by a licensee.

SEC. 19. Section 2083 of the Financial Code is amended to read:

2083. (a) In computing for purposes of Section 2082 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of the eligible security, when combined with the aggregate value of all other eligible securities owned by the licensee that are issued or guaranteed by the same person or by any affiliate of the same person by whom the eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The portion of the aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (b) of Section 2082 that exceeds 25 percent of the aggregate value of all eligible securities owned by the licensee; and that portion of the aggregate value of agent receivables from any one person that exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee, or any higher percentage that the commissioner may approve for the licensee, up to a maximum of 20 percent.

(3) The portion of the aggregate value of all eligible securities of the type described in paragraph (6) of subdivision (b) of Section 2082 that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(4) The portion of the aggregate value of all eligible securities of the type described in paragraph (7) of subdivision (b) of Section 2082 that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(5) The portion of the aggregate value of all eligible securities of the type described in paragraph (8) of subdivision (b) of Section 2082, except for a money market fund that invests exclusively in obligations issued or guaranteed by the United States or any agency of the United States, that exceeds 20 percent of the aggregate value of all eligible securities owned by the licensee.

(6) The portion of the aggregate value of all eligible securities of the type described in paragraphs (6), (7), and (8) of subdivision (b) of Section 2082 that exceeds 50 percent of the aggregate value of all eligible securities owned by the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following eligible securities:

(A) Cash.

(B) Any deposit in an insured bank, insured savings and loan association, or insured credit union.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security that the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not

necessary for the purposes of this division and which the commissioner by regulation or order exempts, in whole or in part, from the limitations of subdivision (a).

SEC. 20. Section 2087 of the Financial Code is amended to read:

2087. (a) If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that the class of securities is of sufficient quality to be eligible securities, the commissioner may by regulation or order declare the rating to be an eligible rating.

(b) With respect to this division “eligible rating” means any rating assigned to such security or class of securities by such eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating.

SEC. 21. Section 2088 of the Financial Code is amended to read:

2088. (a) The commissioner may by regulation or order declare a securities rating service to be an eligible securities rating service if the commissioner finds the following with respect to the securities rating service:

(1) It has been continuously engaged in the business of rating securities for a period of not less than three years.

(2) It is competent to rate securities and is nationally recognized for rating securities in a competent manner.

(3) It publishes its ratings of securities on a nationwide basis.

(b) With respect to this division “eligible securities rating service” means any securities rating service that the commissioner by regulation or order declared to be an eligible securities ratings service.

SEC. 22. Section 2100 of the Financial Code is amended to read:

2100. (a) (1) Each licensee shall file with the commissioner a certified copy of every receipt form used by it or by its agent for receiving money for transmission prior to its first use. No licensee or its agent shall use any receipt, a certified copy of which has not been filed with the commissioner, or use a receipt that the commissioner has deemed not to be in compliance pursuant to paragraph (2).

(2) If the commissioner determines, within 30 business days of the filing date of a receipt, that the receipt does not comply with the requirements of this section or Sections 2102 and 2103, the commissioner shall notify the licensee in writing that the receipt is not in compliance with those requirements.

(b) Notwithstanding subdivision (a), before a new licensee issues its first receipt to a customer, it shall file with the commissioner a certified copy of the receipt forms to be used by it or its agents for receiving money for transmission. The new licensee shall not use the receipt forms until approved by the commissioner. For purposes of this subdivision, a new licensee is a licensee that has not been previously licensed by the commissioner as a money transmitter or has not previously received money for transmission in California.

(c) If a receipt is required by this division to be in English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between

the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(d) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars (\$50) for each violation. This provision is in addition to any other enforcement provisions that may apply to such a violation.

(e) If any licensee or its agent uses a receipt form, a certified copy of which has not been filed with the commissioner, the licensee shall be liable for the acts of its agent whether or not the licensee authorized the agent to use that form.

(f) The receipt form shall comply with the requirements of Sections 2102 and 2103.

SEC. 23. Section 2121 of the Financial Code is amended to read:

2121. The commissioner may consult and cooperate with other state or federal money transmission regulators in enforcing and administering this division. They may jointly pursue examinations and take other official action that they are otherwise empowered to take.

SEC. 24. Section 2124 of the Financial Code is amended to read:

2124. (a) A licensee shall maintain the following records for determining its compliance with this division for at least three years:

- (1) A record of each payment instrument or stored value obligation sold.
- (2) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.
- (3) Bank statements and bank reconciliation records.
- (4) Records of outstanding payment instruments and stored value obligations.
- (5) Records of each payment instrument and stored-value obligation paid within the three-year period.
- (6) A list of the last known names and addresses of all of the licensee's agents and their branch offices.
- (7) Any other records the commissioner reasonably requires by order or regulation.

(b) A licensee or its agent shall maintain records of any receipts provided pursuant to Section 2102 for six months or a longer period of time specified in the contract between the licensee and its agent.

(c) The items specified in subdivisions (a) and (b) may be maintained in any form of record.

(d) Records may be maintained outside this state if they are made available to the commissioner on seven days' notice that is sent in a record.

(e) If records not required to be maintained in English pursuant to Section 456 are in a language other than English, the licensee shall provide records translated into English within seven days' notice that is sent in a record.

SEC. 25. Section 2149 of the Financial Code is amended to read:

2149. (a) The commissioner may issue an order suspending or revoking a license, or taking possession of and placing a licensee in receivership, if after notice and an opportunity for hearing, the commissioner finds that:

(1) The licensee is violating this division or a regulation adopted or an order issued under this division, or a condition of approval issued under this division.

(2) The licensee does not cooperate with an examination or investigation by the commissioner.

(3) The licensee engages in fraud, intentional misrepresentation, or gross negligence.

(4) The competence, experience, character, or general fitness of the licensee, or any director, officer, employee, or person in control of a licensee, indicates that it is not in the public interest to permit the person to provide money transmission services.

(5) The licensee engages in an unsafe or unsound practice.

(6) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(7) The licensee does not remove an agent after the commissioner issues and serves upon the licensee a final order including a finding that the agent has violated this division.

(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any person has applied for any such relief under that law against the licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(9) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's provision of money transmission services, the magnitude of the loss, the gravity of the violation of this division, and the previous conduct of the person involved.

SEC. 26. Section 2150 of the Financial Code is amended to read:

2150. (a) The commissioner may issue an order suspending or revoking the designation of an agent if, after notice and an opportunity for hearing, the commissioner finds that:

(1) The agent violated this division or a regulation adopted or an order issued under this division.

(2) The agent did not cooperate with an examination or investigation by the commissioner.

(3) The agent engaged in fraud, intentional misrepresentation, or gross negligence.

(4) The agent is convicted of a violation of a state or federal anti-money laundering statute.

(5) The competence, experience, character, or general fitness of the agent, or any director, officer, employee, or person in control of the agent, indicates that it is not in the public interest to permit the agent to provide money transmissions.

(6) The agent is engaging in an unsafe or unsound practice.

(7) The agent has made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement that was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any of those applications, reports, or proceedings any material fact which is required to be stated therein.

(8) The agent is an agent of a licensee who, because of its operations and financial condition, is not competent to supervise and monitor the agent.

(9) The agent will not comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) In determining whether an agent is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the agent's provision of money transmission services, the magnitude of the loss, the gravity of the violation of this division or a rule adopted or order issued under this division, and the previous conduct of the agent.

(c) No licensee shall appoint as an agent any person with respect to whom an order issued under this section is in effect.

(d) No person with respect to whom an order issued under this section is in effect shall become or continue to be an agent of any licensee.

(e) If applicable, the commissioner may disclose to the licensee criminal history information upon which an order is based.

SEC. 27. Section 2151.1 of the Financial Code is amended to read:

2151.1. The commissioner may assess a civil penalty against a person that violates this division or a regulation adopted or an order issued under this division in an amount not to exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day or part thereof during which the violation continues, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

SEC. 28. Section 2152 of the Financial Code is amended to read:

2152. (a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this division or that intentionally makes a false entry or omits a material entry in such a record is guilty of a felony.

(b) A person that knowingly engages in an activity for which a license is required under this division without being licensed or exempt from licensure under this division is guilty of a felony.

(c) Nothing in this division limits the power of the state to punish any person for any act that constitutes a crime under any statute.

SEC. 29. Section 2153 of the Financial Code is amended to read:

2153. The enforcement provisions of this division are in addition to any other enforcement powers that the commissioner may have under law.

SEC. 30. Section 2171 of the Financial Code is amended to read:

2171. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, that invalidity, illegality, or unenforceability shall not affect other provisions or

applications of this division that can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this division are declared to be severable.

SEC. 31. Section 2172 of the Financial Code is amended to read:

2172. (a) A license issued under the former Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), or the former Division 16 (commencing with Section 33000) that is in effect immediately before January 1, 2011, shall remain in effect as a valid license under this division.

(b) Any person that, prior to January 1, 2011, was not required to obtain a license under the former Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), or Division 16 (commencing with Section 33000), but is required to have a license under this division, shall file an application for a license pursuant to this division by July 1, 2011, in order to continue conducting money transmission in this state directly or through agents. If the application is timely filed and pending with the commissioner, that person may continue to conduct money transmission in this state, until the application has been approved, abandoned, or denied.