

1 HB215
2 181769-5
3 By Representative Johnson (K)
4 RFD: Financial Services
5 First Read: 14-FEB-17

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ENROLLED, An Act,

To repeal Chapter 7 (commencing with Section 8-7-1) of Title 8, and to add Chapter 7A (commencing with Section 8-7A-1), the Code of Alabama 1975; to provide for regulation of money transmissions by the Alabama Securities Commission; to require any person engaging in the business of monetary transmissions to obtain a license from the commission and specify requirements for licensing and exceptions; to require a licensee to maintain records and specify the commission would periodically examine each licensee; to specify the powers of the commission with regard to enforcement; to provide an aggrieved person with an opportunity for a hearing; to allow the commission to promulgate rules; to provide criminal penalties for violations; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 7 (commencing with Section 8-7-1) of Title 8 of the Code of Alabama 1975, relating to the sale of checks, is repealed.

1 Section 2. Chapter 7A (commencing with Section
2 8-7A-1) of Title 8 is added to Title 8 of the Code of Alabama
3 1975, to read as follows:

4 Chapter 7A. Alabama Monetary Transmission Act.

5 §8-7A-1 Short title.

6 This chapter may be cited as the Alabama Monetary
7 Transmission Act.

8 §8-7A-2. Definitions.

9 For purposes of this chapter, the following terms
10 shall have the following meanings:

11 (1) AGENT or AUTHORIZED DELEGATE. Any person
12 designated or employed by a licensee under this chapter to
13 provide monetary transmission services on behalf of the
14 licensee.

15 (2) APPLICANT. Any person that files an application
16 for a license under this chapter.

17 (3) BANK. An institution organized under federal or
18 state law which meets any of the following requirements:

19 a. Accepts demand deposits or deposits that the
20 depositor may use for payment to third parties and engages in
21 the business of making loans.

22 b. Engages in credit card operations and maintains
23 only one office that accepts deposits, does not accept demand
24 deposits or deposits that a depositor may use for payments to
25 third parties, does not accept a savings or time deposit less

1 than one hundred thousand dollars (\$100,000), and does not
2 engage in the business of making commercial loans.

3 c. Is a trust company subject to the jurisdiction of
4 the Alabama State Banking Department, or subject to another
5 state or federal banking regulatory authority.

6 (4) COMMISSION. The Alabama Securities Commission,
7 its director, officers, or any person authorized to act on its
8 behalf.

9 (5) CONTROL. Any of the following:

10 a. The ownership of, or the power to vote, directly
11 or indirectly, at least 25 percent of a class of voting
12 securities or voting interests of a licensee or person in
13 control of a licensee.

14 b. The power to elect a majority of executive
15 officers, managers, directors, trustees, or other persons
16 exercising managerial authority of a licensee or person in
17 control of a licensee.

18 c. The power to exercise, directly or indirectly, a
19 controlling influence over the management or policies of a
20 licensee or person in control of a licensee.

21 (6) EXECUTIVE OFFICER. A president, chair of the
22 executive committee, chief financial officer, responsible
23 individual, or other individual who performs similar
24 functions.

25 (7) LICENSEE. A person licensed under this chapter.

1 (8) MONETARY VALUE. A medium of exchange, including
 2 virtual or fiat currencies, whether or not redeemable in
 3 money.

4 (9) MONEY. A medium of exchange that is authorized
 5 or adopted by the United States or a foreign government. The
 6 term includes a monetary unit of account established by an
 7 intergovernmental organization or by agreement between two or
 8 more governments.

9 (10) MONEY TRANSMISSION. Selling or issuing payment
 10 instruments, stored value, or receiving money or monetary
 11 value for transmission. The term does not include the
 12 provision solely of delivery, online or telecommunications
 13 services, or network access.

14 (11) PAYMENT INSTRUMENT. A check, draft, money
 15 order, traveler's check, or other means utilized for the
 16 transmission or payment of money or monetary value, whether or
 17 not negotiable. The term does not include a credit voucher,
 18 letter of credit, or instrument that is redeemable by the
 19 issuer in goods and services.

20 (12) PERSON. An individual, corporation, business
 21 trust, estate, trust, partnership, limited liability company,
 22 association, joint venture, government; governmental
 23 subdivision, agency or instrumentality; public corporation; or
 24 any other legal or commercial entity.

1 (13) RECORD. Information that is inscribed on a
2 tangible medium or that is stored in an electronic or other
3 medium and is retrievable in perceivable form.

4 (14) RESPONSIBLE INDIVIDUAL. An individual who is
5 employed by a licensee and has managerial authority over the
6 provision of the money transmittal services of the licensee in
7 this state.

8 (15) STORED VALUE. Monetary value that is evidenced
9 by an electronic record.

10 (16) UNSAFE OR UNSOUND PRACTICE. A practice or
11 conduct by a person licensed to engage in money transmission
12 or an authorized delegate of such person which creates the
13 likelihood of material loss, insolvency, or dissipation of the
14 licensee's assets, or otherwise prejudices the interests of
15 its customers or a practice or conduct defined by rule of the
16 commission to be an unsafe or unsound practice.

17 §8-7A-3 Exclusions.

18 This chapter does not apply to any of the following:

19 (1) The United States or a department, agency, or
20 instrumentality thereof.

21 (2) The transmission of money by the United States
22 Postal Service or by a contractor on behalf of the United
23 States Postal Service.

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

1 (4) Electronic funds transfer of governmental
 2 benefits for a federal, state, or governmental agency by a
 3 contractor on behalf of the United States or a department,
 4 agency, or instrumentality thereof, or a state or governmental
 5 subdivision, agency, or instrumentality thereof.

6 (5) A board of trade designated as a contract market
 7 under the federal Commodity Exchange Act, 7 U.S.C. Sections
 8 1-25 (1994), or a person that, in the ordinary course of
 9 business, provides clearance and settlement services for a
 10 board of trade to the extent of its operation as or for such a
 11 board.

12 (6) A registered futures commission merchant under
 13 the federal commodities laws to the extent of its operation as
 14 such a merchant.

15 (7) A bank, bank holding company, office of an
 16 international banking corporation, or a branch of a foreign
 17 bank, provided that such international banking corporation or
 18 foreign bank is subject to regulation significantly similar to
 19 United States or state chartered banks and deposits are
 20 insured.

21 §8-7A-4. Exemptions from licensing.

22 Sections 8-7A-5 to 8-7A-15, inclusive, shall not
 23 apply to any of the following persons:

24 (1) A person that provides clearance or settlement
 25 services pursuant to a registration as a clearing agency or an

1 exemption from such registration granted under the federal
2 securities laws.

3 (2) An operator of a payment system to the extent
4 that it provides processing, clearing, or settlement services,
5 between or among persons excluded by this section, in
6 connection with wire transfers, credit card transactions,
7 debit card transactions, stored-value transactions, automated
8 clearing house transfers, or similar funds transfers.

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

12 (4) Any person collecting, forwarding, or submitting
13 payments to the state, a state agency, board, or commission, a
14 quasi-governmental agency, or to persons in state custody,
15 provided the person does all of the following:

16 a. Operates in this state exclusively for such
17 purpose.

18 b. Has entered into a binding contract with the
19 governmental entity or entities to provide money transmittal
20 services to third parties.

21 c. Files a notice with the commission identifying
22 all governmental agencies for whom the person has contracted
23 to provide money transmittal services.

24 d. Has an independent audit performed on a yearly
25 basis.

1 e. Immediately notifies the commission if any
2 financial or other condition arises which would compromise the
3 person's ability to perform the services for which the person
4 has contracted.

5 f. Maintains a segregated account or accounts for
6 the deposit and transmittal of third-party payments which will
7 not be comingled with any other funds.

8 g. Upon request, makes its books and records
9 available for examination by the commission.

10 §8-7A-5. License required.

11 (a) A person may not engage in the business of money
12 transmission or advertise, solicit, or hold itself out as
13 providing money transmission unless the person meets one of
14 the following requirements:

15 (1) Is licensed under this chapter.

16 (2) Is an authorized delegate of a person licensed
17 under this chapter.

18 (b) A license under this chapter is not transferable
19 or assignable.

20 §8-7A-6. Application for license.

21 (a) A person applying for a license under this
22 chapter shall do so in a form and in a medium prescribed by
23 the commission. The application shall contain all of the
24 following information:

1 (1) The legal name, the residential address of the
2 applicant if the applicant is an individual, the business
3 addresses of the applicant, and any fictitious or trade name
4 used by the applicant in conducting its business.

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

9 (3) A description of any money transmission services
10 previously provided by the applicant.

11 (4) A list of the proposed authorized delegates of
12 the applicant and the locations in this state where the
13 applicant and its authorized delegates propose to engage in
14 money transmission services.

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

20 (6) Information concerning any bankruptcy within the
21 last seven years, or receivership proceedings affecting the
22 applicant or any control person or affiliate of the applicant.

23 (7) A sample form of any contract the applicant
24 proposes to use, including both of the following:

1 a. Any contract to be used by an authorized delegate
2 or agent of the applicant.

3 b. Any contract to be used with consumers relating
4 to the provision of money transmission services.

5 (8) A sample form of any payment instrument or
6 instrument upon which stored value is recorded, if applicable.

7 (9) The names and addresses of any banks through
8 which the applicant's payment instruments and stored value
9 will be paid.

10 (10) Any other information the commission reasonably
11 requires with respect to the applicant.

12 (b) If an applicant is not an individual or natural
13 person, in addition to the information required in subsection
14 (a), the applicant shall provide all of the following
15 information:

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

18 (2) A certificate of good standing from the state or
19 country in which the applicant is incorporated or formed and
20 proof of registration with the Alabama Secretary of State to
21 do business as a foreign corporation, if incorporated in
22 another state or country.

23 (3) A brief description of the structure or
24 organization of the applicant, including any parent,

1 affiliate, or subsidiary of the applicant, and whether any
2 parent, affiliate, or subsidiary is publicly traded.

3 (4) The legal name, any fictitious name, all
4 business and residential addresses, and the employment, for
5 the 10 years preceding the submission of the application for
6 each executive officer, manager, director, or a person who has
7 direct or indirect control of the applicant.

8 (5) A list of criminal convictions of, and material
9 litigation involving, any executive officer, manager,
10 director, or a person who has direct or indirect control of
11 the applicant, for the 10 years preceding the submission of
12 the application.

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

17 (7) A copy of the applicant's unconsolidated
18 financial statements for the current fiscal year.

19 (8) If the applicant has a registered agent in this
20 state, the name and address of the applicant's registered
21 agent.

22 (9) Any other information the commission reasonably
23 requires with respect to the applicant.

24 (c) A nonrefundable filing fee and a license fee
25 shall accompany an application for a license under this

1 chapter. The commission may set the filing and license fees by
2 rule. The minimum filing fee and license fee shall not be less
3 than five hundred dollars (\$500), respectively.

4 (d) The commission may waive one or more of the
5 requirements in subsections (a) and (b) or permit an applicant
6 to submit alternate information in lieu of the required
7 information.

8 §8-7A-7. Security.

9 (a) A licensee shall maintain a surety bond, letter
10 of credit, or other similar security in an amount, determined
11 by rule or order of the commission, sufficient to secure
12 faithful performance of the obligations of the licensee with
13 respect to money transmission in Alabama.

14 (b) Security must be in a form satisfactory to the
15 commission and payable to the commission for the benefit of
16 any claimant against the licensee.

17 (c) A claimant against a licensee may maintain an
18 action on the bond, or the commission may maintain an action
19 on behalf of the claimant.

20 (d) A surety bond must cover claims for a minimum of
21 five years after the licensee ceases to provide money
22 transmission services in this state. The surety bond may be
23 reduced or eliminated, at the discretion of the commission, to
24 the extent the amount of the licensee's outstanding payment

1 instruments and stored-value obligations are less than the
 2 surety bond coverage.

3 (e) The commission has discretion to accept other
 4 forms of security in lieu of the bond.

5 (f) In no event shall the bond be set at an amount
 6 less than one hundred thousand dollars (\$100,000), or the
 7 average daily outstanding obligations for money received for
 8 transmission in Alabama plus 50 percent of the average daily
 9 outstanding payment instrument and stored value obligations in
 10 Alabama, whichever is greater.

11 (g) The commission may increase the amount of
 12 security required to a maximum of five million dollars
 13 (\$5,000,000) if the financial condition of a licensee so
 14 requires, as evidenced by reduction of net worth, financial
 15 losses, or other relevant criteria.

16 §8-7A-8. Issuance of license.

17 (a) When an application is filed under this chapter,
 18 the commission shall investigate the applicant's financial
 19 condition and responsibility, financial and business
 20 experience, character, and general fitness. The commission may
 21 conduct an on-site investigation of the applicant, the
 22 reasonable cost of which the applicant must pay. The
 23 commission shall issue a license to an applicant under this
 24 chapter if the commission finds that both of the following
 25 conditions have been fulfilled:

1 (1) The applicant has complied with Sections 8-7A-6
2 and 8-7A-7.

3 (2) The financial condition and responsibility,
4 financial and business experience, competence, character, and
5 general fitness of the applicant; and the competence,
6 experience, character, and general fitness of the executive
7 officers, managers, directors, and persons in control of, the
8 applicant indicate that it is in the interest of the public to
9 permit the applicant to engage in money transmission.

10 (b) When an application for an original license
11 under this chapter is determined by the commission to be
12 complete, the commission shall promptly notify the applicant
13 in writing of the date on which the application was determined
14 to be complete, and:

15 (1) The commission shall approve or deny the
16 application within 120 days after that date.

17 (2) If the application is not approved or denied
18 within 120 days after that date, the application is approved,
19 and the license takes effect as of the first business day
20 after expiration of the 120-day period.

21 (c) The commission may for good cause extend the
22 application period.

23 §8-7A-9. Renewal of license.

24 (a) All licenses under this chapter shall expire on
25 March 31 of the calendar year.

1 (b) A licensee under this chapter shall pay an
2 annual renewal fee no later than March 15. The renewal fee
3 shall be established by rule of the commission and shall not
4 be less than five hundred dollars (\$500).

5 (c) A licensee under this chapter shall submit a
6 renewal report with the renewal fee, in a form and in a medium
7 prescribed by the commission. The renewal report shall contain
8 the following information:

9 (1) A copy of the licensee's most recent audited
10 financial statement.

11 (2) The number and monetary value of payment and
12 stored-value instruments sold by the licensee in this state
13 which have not been included in a previous renewal report, and
14 the monetary amount of payment and stored-value instruments
15 currently outstanding.

16 (3) A description of each material change in
17 information submitted by the licensee in its original license
18 application which has not been reported to the commission.

19 (4) Proof that the licensee continues to maintain
20 adequate security as required by Section 8-7A-7.

21 (5) A list of the locations in this state where the
22 licensee or an authorized delegate of the licensee engages in
23 money transmission.

24 (d) The renewal license shall become immediately
25 effective upon the expiration of the current license if the

1 licensee has submitted the renewal fee pursuant to subsection
2 (b) and the required reports pursuant to subsection (c) to the
3 commission.

4 (e) If the licensee fails to renew the license prior
5 to March 31, the licensee shall have 20 days from the
6 expiration date to submit the renewal fee and report required
7 pursuant to subsections (b) and (c), plus a late fee of one
8 hundred dollars (\$100) for each day between expiration of the
9 license and submission of the renewal report. If the licensee
10 perfects renewal of the license prior to the expiration of the
11 20 days, the license renewal shall be effective on April 1,
12 and the licensee shall not be liable for unlicensed monetary
13 transmission during the period between the statutory
14 expiration date and the date the renewal is perfected.

15 (f) The commission, for good cause, may grant an
16 extension of the renewal date.

17 §8-7A-10. Net worth.

18 A licensee under this chapter shall maintain a net
19 worth of at least twenty-five thousand dollars (\$25,000)
20 determined in accordance with generally accepted accounting
21 principles.

22 §8-7A-11. Relationship between licensee and
23 authorized delegate.

1 (a) A contract between a licensee and an authorized
2 delegate shall require the authorized delegate to operate in
3 full compliance with this chapter.

4 (b) The licensee shall establish, furnish, and
5 enforce policies and procedures sufficient to ensure that its
6 authorized delegates comply with this chapter.

7 (c) An authorized delegate may not use a subdelegate
8 to conduct money transmission on behalf of a licensee.

9 §8-7A-12. Examinations.

10 (a) The commission may conduct an annual examination
11 of a licensee or of any of its authorized delegates.

12 (b) The commission may examine a licensee or its
13 authorized delegate, at any time, if the commission has reason
14 to believe that the licensee or authorized delegate is
15 engaging in an unsafe or unsound practice or has violated or
16 is violating this chapter or any rule adopted or order issued
17 under this chapter.

18 (c) If the commission concludes that an on-site
19 examination is necessary under subsection (b), the licensee
20 shall pay the reasonable cost of the examination.

21 (d) Information obtained during any examination
22 under this chapter may be disclosed only as prescribed in
23 Section 8-7A-21.

24 §8-7A-13. Reports.

1 (a) A licensee shall file a report to the commission
2 within 15 business days of any material change in information
3 provided in a licensee's application.

4 (b) A licensee shall file a report with the
5 commission within five business days after the licensee has
6 reason to know of the occurrence of any of the following
7 events:

8 (1) The filing of a petition by or against the
9 licensee under the United States Bankruptcy Code for
10 bankruptcy or reorganization.

11 (2) The filing of a petition by or against the
12 licensee for receivership, the commencement of any other
13 judicial or administrative proceeding for its dissolution or
14 reorganization, or the making of a general assignment for the
15 benefit of its creditors.

16 (3) The commencement of a proceeding to revoke or
17 suspend its license in a state or country in which the
18 licensee engages in business or is licensed.

19 (4) The cancellation or other impairment of the
20 licensee's bond or other security.

21 (5) A charge or conviction of the licensee or of an
22 executive officer, manager, commission, or other control
23 person of the licensee for a felony.

24 (6) A charge or conviction of an authorized delegate
25 of the licensee for a felony.

1 (7) The executive officers, managers, directors, an
2 authorized delegate, or persons in control of the licensee are
3 named in any material civil litigation or class action.

4 (c) (1) A licensee shall give notice of a proposed
5 change of control within 15 days after learning of the
6 proposed change in control.

7 (2) The commission shall approve a request for
8 change of control if, after investigation, the commission
9 determines that the person or group of persons requesting
10 approval has the competence, experience, character, and
11 general fitness to operate the licensee or person in control
12 of the licensee in a lawful and proper manner and that the
13 public interest will not be jeopardized by the change of
14 control.

15 (3) The commission shall approve or deny a request
16 for change of control within 120 days after the notice. If the
17 request has not been approved or denied within 120 days, the
18 request will be deemed to have been approved and will take
19 effect on the first day after the expiration of the 120 days.

20 (d) A licensee and an authorized delegate shall
21 maintain a file of all reports required by federal currency
22 reporting, record keeping, and suspicious transaction
23 reporting requirements as set forth in 31 U.S.C. Section 5311
24 (1994), and other federal and state laws pertaining to money
25 laundering. If an investigation or other inquiry is initiated

1 by any regulatory authority, the licensee shall immediately
2 notify the commission and forward all records associated with
3 such investigation or inquiry.

4 §8-7A-14. Records.

5 (a) A licensee shall maintain all of the following
6 records for determining its compliance with this chapter:

7 (1) A record of each payment instrument or
8 stored-value obligation sold.

9 (2) A general ledger posted at least monthly
10 containing all assets, liabilities, capital, income, and
11 expense accounts.

12 (3) Bank statements and reconciliation records.

13 (4) Records of outstanding payment instruments and
14 stored-value obligations.

15 (5) Records of each payment instrument and
16 stored-value obligation paid within a five-year period.

17 (6) A list of names and addresses of all of the
18 licensee's authorized delegates.

19 (7) Any other record the commission requires by
20 rule.

21 (b) The records referenced in subsection (a) shall
22 be maintained by the licensee for a minimum of five years.
23 Records may be maintained outside of the state.

24 (c) All records of a licensee, authorized delegate,
25 or applicant shall be subject to reasonable, periodic, or

1 special examination, at any time or from time to time, whether
2 the records are located within or outside of this state, as
3 the commission deems necessary or appropriate to the public
4 interest. The licensee shall make any record available for
5 inspection by the commission within five business days of the
6 request.

7 §8-7A-15. Suspension and revocation.

8 (a) The commission, by order, may suspend or revoke
9 a license or order a licensee to revoke the designation of an
10 authorized delegate, with or without prior notice, if the
11 commission finds that such an order is in the best interest of
12 the public, and any of the following circumstances exist:

13 (1) The licensee has violated any provision of this
14 chapter or a rule adopted or an order issued under this
15 chapter.

16 (2) The licensee, or any authorized delegate, does
17 not cooperate with an examination or investigation by the
18 commission.

19 (3) The licensee, or any authorized delegate,
20 engaged in fraud, intentional misrepresentation, or gross
21 negligence.

22 (4) An authorized delegate is convicted of a
23 violation of a state or federal anti-money laundering statute,
24 or willfully violates a rule adopted or an order issued under
25 this chapter.

1 (5) The competence, experience, character, or
2 general fitness of the licensee, authorized delegate, or a
3 control person of a licensee indicates that it is not in the
4 public interest to permit the person to provide money
5 transmission services.

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

9 (7) The licensee engages in an unsafe or unsound
10 practice. In determining whether a licensee is engaging in an
11 unsafe or unsound practice, the commission may consider the
12 size and financial condition of the licensee's money
13 transmission business, the magnitude of any losses, the
14 severity of the violation of this chapter, and the previous
15 disciplinary history of the person involved.

16 (b) The commission may issue an order suspending or
17 revoking the designation of an authorized delegate, if the
18 commission finds that such order is in the best interest of
19 the public, and any of the following circumstances exist:

20 (1) The authorized delegate has violated any
21 provision of this chapter or a rule adopted or an order issued
22 under this chapter.

23 (2) The authorized delegate does not cooperate with
24 an examination or investigation by the commission.

1 (3) The authorized delegate engaged in fraud,
2 intentional misrepresentation, or gross negligence.

3 (4) An authorized delegate is convicted of a
4 violation of a state or federal anti-money laundering statute,
5 or willfully violates a rule adopted or an order issued under
6 this chapter.

7 (5) The competence, experience, character, or
8 general fitness of the authorized delegate indicates that it
9 is not in the public interest to permit the person to provide
10 money transmission services.

11 (6) The authorized delegate engages in an unsafe or
12 unsound practice. In determining whether a licensee is
13 engaging in an unsafe or unsound practice, the commission may
14 consider the size and financial condition of the licensee's
15 money transmission business, magnitude of any losses, severity
16 of the violation of this chapter, and previous disciplinary
17 history of the person involved.

18 §8-7A-16. Unauthorized activities.

19 A person may not provide monetary transmission
20 services on behalf of a person required to be licensed who is
21 not licensed under this chapter. The commission, by rule or
22 order, may further define unauthorized activities.

23 §8-7A-17. Orders to cease and desist and other
24 injunctive or civil relief.

1 (a) If the commission determines that any person has
2 engaged in or is about to engage in any act or practice
3 constituting a violation of this chapter or a rule adopted or
4 an order issued under this chapter, the commission, in its
5 discretion, may do any of the following:

6 (1) Issue an order, with or without a prior hearing
7 or notice, against the person or persons engaged in the act or
8 practice, directing them to cease and desist from engaging in
9 the act or practice.

10 (2) Issue an order appointing a receiver or
11 conservator over a respondent or the respondent's assets.

12 (3) Order restitution or disgorgement against any
13 person who has violated this chapter or any rule adopted or
14 order issued pursuant to this chapter.

15 (3) Bring an action in any court of competent
16 jurisdiction to enjoin an act or practice and to enforce
17 compliance with this chapter or any rule adopted or order
18 issued hereunder. Upon a proper showing, the court may issue a
19 temporary restraining order or permanently enjoin any unlawful
20 act or practice.

21 (b) The commission shall not be required to post a
22 bond.

23 §8-7A-18. Consent orders.

24 The commission may enter into a consent order at any
25 time with a person to resolve a matter arising under this

1 chapter or a rule adopted or order issued under this chapter.
2 A consent order must be signed by the person to whom it is
3 issued or by the person's authorized representative, and must
4 indicate agreement with the terms contained in the order.

5 §8-7A-19. Civil penalties.

6 (a) The commission may assess a civil penalty
7 against a person that violates this chapter or a rule adopted
8 or an order issued under this chapter in an amount not to
9 exceed one thousand dollars (\$1,000) per day for each day the
10 violation is outstanding.

11 (b) In addition to the assessment in subsection (a),
12 the commission may assess a charge for the actual cost of any
13 investigation resulting from any violation of this chapter, a
14 violation of any rule or order issued under this chapter, or
15 the cost of any examination made by the commission pursuant to
16 this chapter, to the person or persons subject to such
17 investigation or examination. All assessments collected under
18 this subsection shall be deposited in the Alabama Securities
19 Commission Fund in the State Treasury to be drawn upon by the
20 commission for its use in administration of this chapter.

21 §8-7A-20. Criminal penalties.

22 (a) A person that intentionally makes a false
23 statement, misrepresentation, or false certification in a
24 record filed or required to be maintained under this chapter
25 or that intentionally makes a false entry or omits a material

1 entry in such a record, upon conviction, shall be guilty of a
2 Class D felony.

3 (b) A person that knowingly engages in an activity
4 for which a license is required under this chapter without
5 being licensed under this chapter and who receives more than
6 five thousand dollars (\$5,000) in compensation within a
7 one-year period from this activity, upon conviction, shall be
8 guilty of a Class C felony.

9 (c) A person that knowingly engages in an activity
10 for which a license is required under this chapter without
11 being licensed under this chapter and who receives no more
12 than five thousand dollars (\$5,000) in compensation within a
13 one-year period from this activity, upon conviction, shall be
14 guilty of a Class D felony.

15 (d) The enforcement of this chapter shall be vested
16 in the commission. It is the duty of the commission to enforce
17 this chapter and to investigate, prevent, and detect
18 violations of this chapter. The commission is vested with the
19 rights, privileges, and powers conferred by law upon district
20 attorneys, including the power to appear before grand juries
21 and to interrogate witnesses before such grand jury. A
22 district attorney may empower the commission to proceed on its
23 behalf in any proceeding under this chapter.

1 (e) In any proceeding under this chapter, scienter
 2 need not be alleged and proved in prosecutions of violations
 3 involving unlicensed money transmission.

4 (f) A proceeding under this chapter shall not
 5 preempt or foreclose any criminal action or liability which
 6 may arise under any other criminal provision of the Code of
 7 Alabama 1975.

8 §8-7A-21. Confidentiality.

9 (a) Except as otherwise provided in subsection (b),
 10 all information or reports obtained by the commission from the
 11 applicant, licensee, or authorized delegate and all
 12 information contained in or related to examination,
 13 investigation, operation, or condition reports prepared by, or
 14 on behalf of, or for the use of the commission, are
 15 confidential and are not subject to disclosure under Section
 16 36-12-40.

17 (b) The commission may disclose information not
 18 otherwise subject to disclosure under subsection (a) to
 19 representatives of state and federal agencies, provided the
 20 agencies submit an undertaking to maintain the confidentiality
 21 of the information in a record.

22 (c) This section does not prohibit the commission
 23 from disclosing to the public a list of persons licensed under
 24 this chapter or the aggregated financial data concerning those
 25 licensees.

1 §8-7A-22. Cooperation.

2 The commission may consult and cooperate with other
3 federal and state agencies in enforcing and administering this
4 chapter. The commission may jointly pursue examinations and
5 take other official action that it is otherwise empowered to
6 take.

7 §8-7A-23. Investigation and subpoenas by commission.

8 (a) The commission may do any of the following:

9 (1) Make such public or private investigations
10 within or outside of this state as it deems necessary to
11 determine whether: Any license under this chapter should be
12 granted, denied, suspended, or revoked; any person has
13 violated or is about to violate any provision of this chapter
14 or any rule or order hereunder; or to aid in the enforcement
15 of this chapter or in the prescribing of rules and forms
16 hereunder.

17 (2) Require or permit any person to file a statement
18 in writing, under oath, or otherwise as the commission may
19 determine, as to all the facts and circumstances concerning
20 the matter to be investigated.

21 (3) Publish information concerning any violation of
22 this chapter or any rule or order hereunder.

23 (b) In relation to any investigation or proceeding
24 under this chapter, the commission, or any officer designated,
25 may administer oaths and affirmations, subpoena witnesses,

1 compel their attendance, take evidence, and require the
2 production of any books, papers, correspondence, memoranda,
3 agreements, or other documents or records which the commission
4 deems relevant to the inquiry.

5 (c) In case of refusal to obey a subpoena, upon
6 application by the commission, any court of competent
7 jurisdiction may issue an order to the person failing to obey
8 the subpoena requiring that person to appear before the
9 commission or the officer designated by it, to produce
10 documentary evidence if so ordered, or to give evidence
11 touching the matter under investigation or in question. The
12 court may hold any person who fails to obey an order of the
13 court in contempt of court.

14 (d) No person is excused from attending and
15 testifying or from producing any document or record before the
16 commission or any officer designated by it, in any proceeding
17 instituted by the commission, on the ground that the testimony
18 or evidence, documentary or otherwise, required of the person
19 may tend to incriminate him or her or subject him or her to a
20 penalty or forfeiture; provided, no individual may be
21 prosecuted or subjected to any penalty or forfeiture using or
22 based on information he or she offered after asserting such
23 privilege, except that the individual so testifying shall not
24 be exempt from prosecution and punishment for perjury
25 committed in so testifying. Nothing in this section shall

1 prohibit the commission from prosecuting any person compelled
2 to testify or provide evidence, if the commission has
3 sufficient evidence, derived from other sources not
4 discovered, derived, or revealed from such compelled testimony
5 or evidence, to sustain a prosecution for a violation under
6 this chapter.

7 §8-7A-24. Party aggrieved by order entitled to
8 hearing before commission; appeals from action of commission.

9 (a) Any person aggrieved by an order issued under
10 this chapter shall be entitled to a hearing, as authorized for
11 contested cases, pursuant to the Administrative Procedure Act,
12 Chapter 22 of Title 41, if the aggrieved person, within 28
13 days after delivery of the order, submits a written request
14 for a hearing before the commission. The order shall disclose
15 the right to a hearing upon written request within 28 days
16 after delivery of the order. If no timely request for a
17 hearing is made, the order shall constitute a final order of
18 the commission.

19 (b) Any appeal from any final order of the
20 commission shall be made to the Circuit Court of Montgomery
21 County and shall be governed by the provisions of the
22 Administrative Procedure Act pertaining to judicial review.

23 §8-7A-25. Burden of proving an exemption or an
24 exception from a definition.

1 In any proceeding under this chapter, the burden of
2 proving an exemption or an exception from a definition is upon
3 the person claiming it.

4 §8-7A-26. Making, amending, and rescinding rules and
5 prescribing forms.

6 The commission from time to time, may make, amend,
7 and rescind rules and prescribe forms as are necessary and
8 desirable to carry out this chapter. No rules or forms may be
9 made or prescribed unless the commission finds that the action
10 is necessary or appropriate in the public interest and
11 consistent with the purposes fairly intended by the policy and
12 provisions of this chapter. In prescribing rules and forms,
13 the commission may cooperate with the administrators of other
14 states, industry representatives, and other federal regulatory
15 bodies with a view to effectuate the policy of this chapter to
16 achieve maximum uniformity in the form and content of
17 applications and reports wherever practicable. All rules shall
18 be adopted pursuant to the Alabama Administrative Procedure
19 Act and, along with all forms adopted, be published by the
20 commission.

21 §8-7A-27. Interpretive opinions by the commission.

22 (a) The commission may issue interpretative opinions
23 and no-action letters upon request from interested persons.
24 Such opinions or no-action letters shall be limited in scope
25 and may not be requested to provide legal advice to any

1 person. No opinion or no-action letter shall be issued on a
2 hypothetical basis.

3 (b) Any person who makes application to the
4 commission for an interpretative opinion or no-action letter
5 shall be assessed a nonrefundable filing fee of five hundred
6 dollars (\$500) upon application for such opinion or no-action
7 letter.

8 Section 3. Persons licensed and in good standing
9 pursuant to Chapter 7 of Title 8, Code of Alabama 1975, on the
10 effective date of this act, shall retain the license issued
11 pursuant to that chapter without interruption until their next
12 licensing renewal date.

13 Section 4. Although this bill would have as its
14 purpose or effect the requirement of a new or increased
15 expenditure of local funds, the bill is excluded from further
16 requirements and application under Amendment 621 because the
17 bill defines a new crime or amends the definition of an
18 existing crime.

19 Section 5. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.

