

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

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8 SYNOPSIS: Under existing law, the sale of checks is
9 regulated by the Alabama Securities Commission.

10 This bill would repeal the existing Sale of
11 Checks Act and replace it with the Alabama Monetary
12 Transmission Act. This bill would provide that
13 money transmissions are regulated by the Alabama
14 Securities Commission, and would require any person
15 engaging in the business of monetary transmissions
16 to obtain a license from the commission. This bill
17 would specify the process and requirements to
18 obtain a license, exclude certain money
19 transmissions from the requirements of the act, and
20 provide exceptions from licensing to certain
21 persons. This bill would require a licensee to
22 maintain records with regard to each money
23 transmission transaction and would specify the
24 commission would periodically examine each
25 licensee.

26 This bill would specify the powers of the
27 commission with regard to enforcement of the act,

1 including the power to issue orders to cease and
2 desist and to suspend or revoke a license. This
3 bill would provide that a person aggrieved by an
4 action of the commission would be entitled to an
5 administrative hearing. This bill would allow the
6 commission to promulgate rules. This bill would
7 provide criminal penalties for violations.

8 Amendment 621 of the Constitution of Alabama
9 of 1901, now appearing as Section 111.05 of the
10 Official Recompilation of the Constitution of
11 Alabama of 1901, as amended, prohibits a general
12 law whose purpose or effect would be to require a
13 new or increased expenditure of local funds from
14 becoming effective with regard to a local
15 governmental entity without enactment by a 2/3 vote
16 unless: it comes within one of a number of
17 specified exceptions; it is approved by the
18 affected entity; or the Legislature appropriates
19 funds, or provides a local source of revenue, to
20 the entity for the purpose.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To repeal Chapter 7 (commencing with Section 8-7-1)
27 of Title 8, and to add Chapter 7A (commencing with Section

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

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 Section 2. Chapter 7A (commencing with Section
22 8-7A-1) of Title 8 is added to Title 8 of the Code of Alabama
23 1975, to read as follows:

24 Chapter 7A. Alabama Monetary Transmission Act.

25 §8-7A-1 Short title.

26 This chapter may be cited as the Alabama Monetary
27 Transmission Act.

1 §8-7A-2. Definitions.

2 For purposes of this chapter, the following terms
3 shall have the following meanings:

4 (1) AGENT or AUTHORIZED DELEGATE. Any person
5 designated or employed by a licensee under this chapter to
6 provide monetary transmission services on behalf of the
7 licensee.

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

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

12 a. Accepts demand deposits or deposits that the
13 depositor may use for payment to third parties and engages in
14 the business of making loans.

15 b. Engages in credit card operations and maintains
16 only one office that accepts deposits, does not accept demand
17 deposits or deposits that a depositor may use for payments to
18 third parties, does not accept a savings or time deposit less
19 than one hundred thousand dollars (\$100,000), and does not
20 engage in the business of making commercial loans.

21 c. Is a trust company subject to the jurisdiction of
22 the Alabama State Banking Department, or subject to another
23 state or federal banking regulatory authority.

24 (4) COMMISSION. The Alabama Securities Commission,
25 its director, officers, or any person authorized to act on its
26 behalf.

27 (5) CONTROL. Any of the following:

1 a. The ownership of, or the power to vote, directly
2 or indirectly, at least 25 percent of a class of voting
3 securities or voting interests of a licensee or person in
4 control of a licensee.

5 b. The power to elect a majority of executive
6 officers, managers, directors, trustees, or other persons
7 exercising managerial authority of a licensee or person in
8 control of a licensee.

9 c. The power to exercise, directly or indirectly, a
10 controlling influence over the management or policies of a
11 licensee or person in control of a licensee.

12 (6) EXECUTIVE OFFICER. A president, chair of the
13 executive committee, chief financial officer, responsible
14 individual, or other individual who performs similar
15 functions.

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

17 (8) MONETARY VALUE. A medium of exchange, including
18 virtual or fiat currencies, whether or not redeemable in
19 money.

20 (9) MONEY. A medium of exchange that is authorized
21 or adopted by the United States or a foreign government. The
22 term includes a monetary unit of account established by an
23 intergovernmental organization or by agreement between two or
24 more governments.

25 (10) MONEY TRANSMISSION. Selling or issuing payment
26 instruments, stored value, or receiving money or monetary
27 value for transmission. The term does not include the

1 provision solely of delivery, online or telecommunications
2 services, or network access.

3 (11) PAYMENT INSTRUMENT. A check, draft, money
4 order, traveler's check, or other means utilized for the
5 transmission or payment of money or monetary value, whether or
6 not negotiable. The term does not include a credit voucher,
7 letter of credit, or instrument that is redeemable by the
8 issuer in goods and services.

9 (12) PERSON. An individual, corporation, business
10 trust, estate, trust, partnership, limited liability company,
11 association, joint venture, government; governmental
12 subdivision, agency or instrumentality; public corporation; or
13 any other legal or commercial entity.

14 (13) RECORD. Information that is inscribed on a
15 tangible medium or that is stored in an electronic or other
16 medium and is retrievable in perceivable form.

17 (14) RESPONSIBLE INDIVIDUAL. An individual who is
18 employed by a licensee and has managerial authority over the
19 provision of the money transmittal services of the licensee in
20 this state.

21 (15) STORED VALUE. Monetary value that is evidenced
22 by an electronic record.

23 (16) UNSAFE OR UNSOUND PRACTICE. A practice or
24 conduct by a person licensed to engage in money transmission
25 or an authorized delegate of such person which creates the
26 likelihood of material loss, insolvency, or dissipation of the
27 licensee's assets, or otherwise prejudices the interests of

1 its customers or a practice or conduct defined by rule of the
2 commission to be an unsafe or unsound practice.

3 §8-7A-3 Exclusions.

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

5 (1) The United States or a department, agency, or
6 instrumentality thereof.

7 (2) The transmission of money by the United States
8 Postal Service or by a contractor on behalf of the United
9 States Postal Service.

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

12 (4) Electronic funds transfer of governmental
13 benefits for a federal, state, or governmental agency by a
14 contractor on behalf of the United States or a department,
15 agency, or instrumentality thereof, or a state or governmental
16 subdivision, agency, or instrumentality thereof.

17 (5) A board of trade designated as a contract market
18 under the federal Commodity Exchange Act, 7 U.S.C. Sections
19 1-25 (1994), or a person that, in the ordinary course of
20 business, provides clearance and settlement services for a
21 board of trade to the extent of its operation as or for such a
22 board.

23 (6) A registered futures commission merchant under
24 the federal commodities laws to the extent of its operation as
25 such a merchant.

26 (7) A bank, bank holding company, office of an
27 international banking corporation, or a branch of a foreign

1 bank, provided that such international banking corporation or
2 foreign bank is subject to regulation significantly similar to
3 United States or state chartered banks and deposits are
4 insured.

5 §8-7A-4. Exemptions from licensing.

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

8 (1) A person that provides clearance or settlement
9 services pursuant to a registration as a clearing agency or an
10 exemption from such registration granted under the federal
11 securities laws.

12 (2) An operator of a payment system to the extent
13 that it provides processing, clearing, or settlement services,
14 between or among persons excluded by this section, in
15 connection with wire transfers, credit card transactions,
16 debit card transactions, stored-value transactions, automated
17 clearing house transfers, or similar funds transfers.

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

21 (4) Any person collecting, forwarding, or submitting
22 payments to the state, a state agency, board, or commission, a
23 quasi-governmental agency, or to persons in state custody,
24 provided the person does all of the following:

25 a. Operates in this state exclusively for such
26 purpose.

1 b. Has entered into a binding contract with the
2 governmental entity or entities to provide money transmittal
3 services to third parties.

4 c. Files a notice with the commission identifying
5 all governmental agencies for whom the person has contracted
6 to provide money transmittal services.

7 d. Has an independent audit performed on a yearly
8 basis.

9 e. Immediately notifies the commission if any
10 financial or other condition arises which would compromise the
11 person's ability to perform the services for which the person
12 has contracted.

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

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

18 §8-7A-5. License required.

19 (a) A person may not engage in the business of money
20 transmission or advertise, solicit, or hold itself out as
21 providing money transmission unless the person meets one of
22 the following requirements:

23 (1) Is licensed under this chapter.

24 (2) Is an authorized delegate of a person licensed
25 under this chapter.

26 (b) A license under this chapter is not transferable
27 or assignable.

1 §8-7A-6. Application for license.

2 (a) A person applying for a license under this
3 chapter shall do so in a form and in a medium prescribed by
4 the commission. The application shall contain all of the
5 following information:

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

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

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

16 (4) A list of the proposed authorized delegates of
17 the applicant and the locations in this state where the
18 applicant and its authorized delegates propose to engage in
19 money transmission services.

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

25 (6) Information concerning any bankruptcy within the
26 last seven years, or receivership proceedings affecting the
27 applicant or any control person or affiliate of the applicant.

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

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

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

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

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

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

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

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

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

25 (3) A brief description of the structure or
26 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
26 chapter. The commission may set the filing and license fees by

1 rule. The minimum filing fee and license fee shall not be less
2 than five hundred dollars (\$500), respectively.

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

7 §8-7A-7. Security.

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

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

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

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

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

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

7 (g) The commission may increase the amount of
8 security required to a maximum of five million dollars
9 (\$5,000,000) if the financial condition of a licensee so
10 requires, as evidenced by reduction of net worth, financial
11 losses, or other relevant criteria.

12 §8-7A-8. Issuance of license.

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

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

24 (2) The financial condition and responsibility,
25 financial and business experience, competence, character, and
26 general fitness of the applicant; and the competence,
27 experience, character, and general fitness of the executive

1 officers, managers, directors, and persons in control of, the
2 applicant indicate that it is in the interest of the public to
3 permit the applicant to engage in money transmission.

4 (b) When an application for an original license
5 under this chapter is determined by the commission to be
6 complete, the commission shall promptly notify the applicant
7 in writing of the date on which the application was determined
8 to be complete, and:

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

11 (2) If the application is not approved or denied
12 within 120 days after that date, the application is approved,
13 and the license takes effect as of the first business day
14 after expiration of the 120-day period.

15 (c) The commission may for good cause extend the
16 application period.

17 §8-7A-9. Renewal of license.

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

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

24 (c) A licensee under this chapter shall submit a
25 renewal report with the renewal fee, in a form and in a medium
26 prescribed by the commission. The renewal report shall contain
27 the following information:

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

3 (2) The number and monetary value of payment and
4 stored-value instruments sold by the licensee in this state
5 which have not been included in a previous renewal report, and
6 the monetary amount of payment and stored-value instruments
7 currently outstanding.

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

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

13 (5) A list of the locations in this state where the
14 licensee or an authorized delegate of the licensee engages in
15 money transmission.

16 (d) The renewal license shall become immediately
17 effective upon the expiration of the current license if the
18 licensee has submitted the renewal fee pursuant to subsection
19 (b) and the required reports pursuant to subsection (c) to the
20 commission.

21 (e) If the licensee fails to renew the license prior
22 to March 31, the licensee shall have 20 days from the
23 expiration date to submit the renewal fee and report required
24 pursuant to subsections (b) and (c), plus a late fee of one
25 hundred dollars (\$100) for each day between expiration of the
26 license and submission of the renewal report. If the licensee
27 perfects renewal of the license prior to the expiration of the

1 20 days, the license renewal shall be effective on April 1,
2 and the licensee shall not be liable for unlicensed monetary
3 transmission during the period between the statutory
4 expiration date and the date the renewal is perfected.

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

7 §8-7A-10. Net worth.

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

12 §8-7A-11. Relationship between licensee and
13 authorized delegate.

14 (a) A contract between a licensee and an authorized
15 delegate shall require the authorized delegate to operate in
16 full compliance with this chapter.

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

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

22 §8-7A-12. Examinations.

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

25 (b) The commission may examine a licensee or its
26 authorized delegate, at any time, if the commission has reason
27 to believe that the licensee or authorized delegate is

1 engaging in an unsafe or unsound practice or has violated or
2 is violating this chapter or any rule adopted or order issued
3 under this chapter.

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

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

10 §8-7A-13. Reports.

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

14 (b) A licensee shall file a report with the
15 commission within five business days after the licensee has
16 reason to know of the occurrence of any of the following
17 events:

18 (1) The filing of a petition by or against the
19 licensee under the United States Bankruptcy Code for
20 bankruptcy or reorganization.

21 (2) The filing of a petition by or against the
22 licensee for receivership, the commencement of any other
23 judicial or administrative proceeding for its dissolution or
24 reorganization, or the making of a general assignment for the
25 benefit of its creditors.

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

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

6 (5) A charge or conviction of the licensee or of an
7 executive officer, manager, commission, or other control
8 person of the licensee for a felony.

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

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

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

17 (2) The commission shall approve a request for
18 change of control if, after investigation, the commission
19 determines that the person or group of persons requesting
20 approval has the competence, experience, character, and
21 general fitness to operate the licensee or person in control
22 of the licensee in a lawful and proper manner and that the
23 public interest will not be jeopardized by the change of
24 control.

25 (3) The commission shall approve or deny a request
26 for change of control within 120 days after the notice. If the
27 request has not been approved or denied within 120 days, the

1 request will be deemed to have been approved and will take
2 effect on the first day after the expiration of the 120 days.

3 (d) A licensee and an authorized delegate shall
4 maintain a file of all reports required by federal currency
5 reporting, record keeping, and suspicious transaction
6 reporting requirements as set forth in 31 U.S.C. Section 5311
7 (1994), and other federal and state laws pertaining to money
8 laundering. If an investigation or other inquiry is initiated
9 by any regulatory authority, the licensee shall immediately
10 notify the commission and forward all records associated with
11 such investigation or inquiry.

12 §8-7A-14. Records.

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

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

17 (2) A general ledger posted at least monthly
18 containing all assets, liabilities, capital, income, and
19 expense accounts.

20 (3) Bank statements and reconciliation records.

21 (4) Records of outstanding payment instruments and
22 stored-value obligations.

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

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

1 (7) Any other record the commission requires by
2 rule.

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

6 (c) All records of a licensee, authorized delegate,
7 or applicant shall be subject to reasonable, periodic, or
8 special examination, at any time or from time to time, whether
9 the records are located within or outside of this state, as
10 the commission deems necessary or appropriate to the public
11 interest. The licensee shall make any record available for
12 inspection by the commission within five business days of the
13 request.

14 §8-7A-15. Suspension and revocation.

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

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

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

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

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

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

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

16 (7) The licensee engages in an unsafe or unsound
17 practice. In determining whether a licensee is engaging in an
18 unsafe or unsound practice, the commission may consider the
19 size and financial condition of the licensee's money
20 transmission business, the magnitude of any losses, the
21 severity of the violation of this chapter, and the previous
22 disciplinary history of the person involved.

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

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

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

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

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

12 (5) The competence, experience, character, or
13 general fitness of the authorized delegate indicates that it
14 is not in the public interest to permit the person to provide
15 money transmission services.

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

23 §8-7A-16. Unauthorized activities.

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

1 §8-7A-17. Orders to cease and desist and other
2 injunctive or civil relief.

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

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

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

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

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

23 (b) The commission shall not be required to post a
24 bond.

25 §8-7A-18. Consent orders.

26 The commission may enter into a consent order at any
27 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
26 entry in such a record, upon conviction, shall be guilty of a
27 Class D felony.

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

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

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

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

25 (f) A proceeding under this chapter shall not
26 preempt or foreclose any criminal action or liability which

1 may arise under any other criminal provision of the Code of
2 Alabama 1975.

3 §8-7A-21. Confidentiality.

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

12 (b) The commission may disclose information not
13 otherwise subject to disclosure under subsection (a) to
14 representatives of state and federal agencies, provided the
15 agencies submit an undertaking to maintain the confidentiality
16 of the information in a record.

17 (c) This section does not prohibit the commission
18 from disclosing to the public a list of persons licensed under
19 this chapter or the aggregated financial data concerning those
20 licensees.

21 §8-7A-22. Cooperation.

22 The commission may consult and cooperate with other
23 federal and state agencies in enforcing and administering this
24 chapter. The commission may jointly pursue examinations and
25 take other official action that it is otherwise empowered to
26 take.

27 §8-7A-23. Investigation and subpoenas by commission.

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

2 (1) Make such public or private investigations
3 within or outside of this state as it deems necessary to
4 determine whether: Any license under this chapter should be
5 granted, denied, suspended, or revoked; any person has
6 violated or is about to violate any provision of this chapter
7 or any rule or order hereunder; or to aid in the enforcement
8 of this chapter or in the prescribing of rules and forms
9 hereunder.

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

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

16 (b) In relation to any investigation or proceeding
17 under this chapter, the commission, or any officer designated,
18 may administer oaths and affirmations, subpoena witnesses,
19 compel their attendance, take evidence, and require the
20 production of any books, papers, correspondence, memoranda,
21 agreements, or other documents or records which the commission
22 deems relevant to the inquiry.

23 (c) In case of refusal to obey a subpoena, upon
24 application by the commission, any court of competent
25 jurisdiction may issue an order to the person failing to obey
26 the subpoena requiring that person to appear before the
27 commission or the officer designated by it, to produce

1 documentary evidence if so ordered, or to give evidence
2 touching the matter under investigation or in question. The
3 court may hold any person who fails to obey an order of the
4 court in contempt of court.

5 (d) No person is excused from attending and
6 testifying or from producing any document or record before the
7 commission or any officer designated by it, in any proceeding
8 instituted by the commission, on the ground that the testimony
9 or evidence, documentary or otherwise, required of the person
10 may tend to incriminate him or her or subject him or her to a
11 penalty or forfeiture; provided, no individual may be
12 prosecuted or subjected to any penalty or forfeiture using or
13 based on information he or she offered after asserting such
14 privilege, except that the individual so testifying shall not
15 be exempt from prosecution and punishment for perjury
16 committed in so testifying. Nothing in this section shall
17 prohibit the commission from prosecuting any person compelled
18 to testify or provide evidence, if the commission has
19 sufficient evidence, derived from other sources not
20 discovered, derived, or revealed from such compelled testimony
21 or evidence, to sustain a prosecution for a violation under
22 this chapter.

23 §8-7A-24. Party aggrieved by order entitled to
24 hearing before commission; appeals from action of commission.

25 (a) Any person aggrieved by an order issued under
26 this chapter shall be entitled to a hearing, as authorized for
27 contested cases, pursuant to the Administrative Procedure Act,

1 Chapter 22 of Title 41, if the aggrieved person, within 28
2 days after delivery of the order, submits a written request
3 for a hearing before the commission. The order shall disclose
4 the right to a hearing upon written request within 28 days
5 after delivery of the order. If no timely request for a
6 hearing is made, the order shall constitute a final order of
7 the commission.

8 (b) Any appeal from any final order of the
9 commission shall be made to the Circuit Court of Montgomery
10 County and shall be governed by the provisions of the
11 Administrative Procedure Act pertaining to judicial review.

12 §8-7A-25. Burden of proving an exemption or an
13 exception from a definition.

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

17 §8-7A-26. Making, amending, and rescinding rules and
18 prescribing forms.

19 The commission from time to time, may make, amend,
20 and rescind rules and prescribe forms as are necessary and
21 desirable to carry out this chapter. No rules or forms may be
22 made or prescribed unless the commission finds that the action
23 is necessary or appropriate in the public interest and
24 consistent with the purposes fairly intended by the policy and
25 provisions of this chapter. In prescribing rules and forms,
26 the commission may cooperate with the administrators of other
27 states, industry representatives, and other federal regulatory

1 bodies with a view to effectuate the policy of this chapter to
2 achieve maximum uniformity in the form and content of
3 applications and reports wherever practicable. All rules shall
4 be adopted pursuant to the Alabama Administrative Procedure
5 Act and, along with all forms adopted, be published by the
6 commission.

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

8 (a) The commission may issue interpretative opinions
9 and no-action letters upon request from interested persons.
10 Such opinions or no-action letters shall be limited in scope
11 and may not be requested to provide legal advice to any
12 person. No opinion or no-action letter shall be issued on a
13 hypothetical basis.

14 (b) Any person who makes application to the
15 commission for an interpretative opinion or no-action letter
16 shall be assessed a nonrefundable filing fee of five hundred
17 dollars (\$500) upon application for such opinion or no-action
18 letter.

19 Section 3. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621 because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

25 Section 4. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

