

DEPARTMENT OF FINANCIAL INSTITUTIONS

AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies provisions related to persons subject to the jurisdiction of the Department of Financial Institutions.

Highlighted Provisions:

This bill:

- ▶ provides for fees payable to the commissioner by money transmitters;
- ▶ defines "nationwide database" and requires certain persons under the jurisdiction of the Department of Financial Institutions to register with the nationwide database;
- ▶ grants rulemaking authority related to the transition of persons registering with the nationwide database;
- ▶ enacts the Money Transmitter Act, including:
 - defining terms;
 - granting rulemaking authority;
 - requiring licensure;
 - providing exemptions;
 - establishing license qualifications;
 - creating the licensure process;
 - requiring a surety bond;
 - providing for the renewal of a license;
 - requiring reporting of certain events;
 - addressing authorized agent contracts and conduct;

- authorizing examinations;
 - addressing confidentiality of information;
 - authorizing termination or suspension of authorized agent activity;
 - addressing licensee liability;
 - imposing criminal and civil penalties; and
 - permitting consent and emergency orders; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 7-1-401**, as last amended by Laws of Utah 2014, Chapter 345
- 7-22-101**, as last amended by Laws of Utah 2013, Chapter 73
- 7-22-103**, as last amended by Laws of Utah 1996, Chapter 182
- 7-24-102**, as last amended by Laws of Utah 2005, Chapter 2
- 7-24-201**, as last amended by Laws of Utah 2008, Chapter 382
- 70D-2-102**, as last amended by Laws of Utah 2013, Chapter 399
- 70D-2-201**, as last amended by Laws of Utah 2014, Chapter 97
- 70D-2-203**, as last amended by Laws of Utah 2014, Chapter 97

ENACTS:

- 7-25-101**, Utah Code Annotated 1953
- 7-25-102**, Utah Code Annotated 1953
- 7-25-103**, Utah Code Annotated 1953
- 7-25-201**, Utah Code Annotated 1953
- 7-25-202**, Utah Code Annotated 1953
- 7-25-203**, Utah Code Annotated 1953

58 **7-25-204**, Utah Code Annotated 1953
59 **7-25-205**, Utah Code Annotated 1953
60 **7-25-206**, Utah Code Annotated 1953
61 **7-25-301**, Utah Code Annotated 1953
62 **7-25-302**, Utah Code Annotated 1953
63 **7-25-303**, Utah Code Annotated 1953
64 **7-25-304**, Utah Code Annotated 1953
65 **7-25-305**, Utah Code Annotated 1953
66 **7-25-401**, Utah Code Annotated 1953
67 **7-25-402**, Utah Code Annotated 1953
68 **7-25-403**, Utah Code Annotated 1953
69 **7-25-404**, Utah Code Annotated 1953
70 **7-25-405**, Utah Code Annotated 1953
71 **7-25-406**, Utah Code Annotated 1953
72 **7-25-407**, Utah Code Annotated 1953

73 REPEALS:

74 **70D-2-202**, as renumbered and amended by Laws of Utah 2009, Chapter 72

75

76 *Be it enacted by the Legislature of the state of Utah:*

77 Section 1. Section **7-1-401** is amended to read:

78 **7-1-401. Fees payable to commissioner.**

79 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
80 institution under the jurisdiction of the department shall pay an annual fee:

81 (a) computed by averaging the total assets of the depository institution shown on each
82 quarterly report of condition for the depository institution for the calendar year immediately
83 proceeding the date on which the annual fee is due under Section **7-1-402**; and

84 (b) at the following rates:

85 (i) on the first \$5,000,000 of these assets, the greater of:

86 (A) 65 cents per \$1,000; or

87 (B) \$500;

88 (ii) on the next \$10,000,000 of these assets, 35 cents per \$1,000;

89 (iii) on the next \$35,000,000 of these assets, 15 cents per \$1,000;

90 (iv) on the next \$50,000,000 of these assets, 12 cents per \$1,000;

91 (v) on the next \$200,000,000 of these assets, 10 cents per \$1,000;

92 (vi) on the next \$300,000,000 of these assets, 6 cents per \$1,000; and

93 (vii) on all amounts over \$600,000,000 of these assets, 2 cents per \$1,000.

94 (2) A financial institution with a trust department shall pay a fee determined in
95 accordance with Subsection (7) for each examination of the trust department by a state
96 examiner.

97 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
98 pay a basic fee of \$25 instead of the fee required under Subsection (1).

99 (4) A trust company that is not a depository institution or a subsidiary of a depository
100 institution holding company shall pay:

101 (a) an annual fee of \$500; and

102 (b) an additional fee determined in accordance with Subsection (7) for each
103 examination by a state examiner.

104 (5) Any person or institution under the jurisdiction of the department that does not pay
105 a fee under Subsections (1) through (4) shall pay:

106 (a) an annual fee of \$200; and

107 (b) an additional fee determined in accordance with Subsection (7) for each
108 examination by a state examiner.

109 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,
110 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

111 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the
112 person:

113 (A) is a person with authority to transact business as:

- 114 (I) a depository institution;
115 (II) a trust company; or
116 (III) any other person described in Section 7-1-501 as being subject to the jurisdiction
117 of the department; and
118 (B) has total assets in an amount less than \$5,000,000; or
119 (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and
120 (b) all reasonable expenses incurred in processing the application.
121 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55
122 per hour:
123 (i) for each examiner; and
124 (ii) per hour worked.
125 (b) For an examination of a branch or office of a financial institution located outside of
126 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
127 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
128 conducting the examination.
129 (8) In addition to a fee under Subsection (5), a person registering under Section
130 7-23-201 or 7-24-201 shall pay an original registration fee of \$300.
131 (9) In addition to a fee under Subsection (5), a person applying for licensure under
132 Chapter 25, Money Transmitter Act, shall pay an original license fee of \$300.
133 Section 2. Section 7-22-101 is amended to read:
134 **7-22-101. Definitions -- Exemptions.**
135 (1) As used in this chapter:
136 (a) "Escrow" means an agreement, express or implied, that provides for one or more
137 parties to deliver or entrust money, a certificate of deposit, a security, a negotiable instrument, a
138 deed, or other property or asset to another person to be held, paid, or delivered in accordance
139 with terms and conditions prescribed in the agreement.
140 (b) "Escrow agent" means a person that provides or offers to provide escrow services
141 to the public.

(c) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.

(2) This chapter does not apply to:

(a) a trust company authorized to engage in the trust business in Utah in accordance with Chapter 5, Trust Business;

(b) a person other than an escrow agent regulated under this chapter that is exempted from the definition of trust business in Subsection 7-5-1(1);

(c) a depository institution chartered by a state or the federal government that is engaged in business as a depository institution in Utah;

(d) the State Board of Regents, the Utah Higher Education Assistance Authority, or the State Treasurer; and

(e) a person licensed under Title 31A, Insurance Code.

Section 3. Section 7-22-103 is amended to read:

7-22-103. Registration -- Fees -- Qualifications -- Rulemaking.

(1) (a) ~~[Each]~~ An escrow agent shall register with the department annually on or before ~~[July 15]~~ December 31 of each year and pay a registration fee of \$100.

(b) Registration of an escrow agent in accordance with this section includes all directors, officers, employees, and representatives of the escrow agent while acting in the course of ~~[its]~~ the escrow agent's business.

(2) ~~[Each]~~ To register under this chapter an escrow agent shall provide the department:

(a) evidence satisfactory to the commissioner that the person is registered with the nationwide database;

(b) a financial statement; and

(c) any other information requested by the department ~~[when submitting each annual application for registration]~~.

(3) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the

170 nationwide database.

171 Section 4. Section **7-24-102** is amended to read:

172 **7-24-102. Definitions.**

173 As used in this chapter:

174 (1) "Nationwide database" means the Nationwide Mortgage Licensing System and
175 Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan
176 originators.

177 [~~(1)~~] (2) "Rollover" means the extension or renewal of the term of a title loan.

178 [~~(2)~~] (3) (a) "Title lender" means a person that extends a title loan.

179 (b) "Title lender" includes a person that:

180 (i) arranges a title loan on behalf of a title lender;

181 (ii) acts as an agent for a title lender; or

182 (iii) assists a title lender in the extension of a title loan.

183 [~~(3)~~] (4) (a) "Title loan" means a loan secured by the title to a:

184 (i) motor vehicle, as defined in Section [41-6a-102](#);

185 (ii) mobile home, as defined in Section [41-6a-102](#); or

186 (iii) motorboat, as defined in Section [73-18-2](#).

187 (b) "Title loan" includes a title loan extended at the same premise on which any of the
188 following are sold:

189 (i) a motor vehicle, as defined in Section [41-6a-102](#);

190 (ii) a mobile home, as defined in Section [41-6a-102](#); or

191 (iii) a motorboat, as defined in Section [73-18-2](#).

192 (c) "Title loan" does not include:

193 (i) a purchase money loan;

194 (ii) a loan made in connection with the sale of a:

195 (A) motor vehicle, as defined in Section [41-6a-102](#);

196 (B) mobile home, as defined in Section [41-6a-102](#); or

197 (C) motorboat, as defined in Section [73-18-2](#); or

(iii) a loan extended by an institution listed in Section 7-24-305.

Section 5. Section 7-24-201 is amended to read:

7-24-201. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident unless the person:

(i) registers with the department in accordance with this chapter; and

(ii) maintains a valid registration.

(b) It is unlawful for a person to operate a mobile facility in this state to extend a title loan.

(2) (a) A registration and a renewal of a registration expires on ~~April 30~~ December 31 of each year unless on or before that date the person renews the registration.

(b) To register under this section, a person shall:

(i) pay an original registration fee established under Subsection 7-1-401(8); and

(ii) submit a registration statement containing the information described in Subsection (2)(d).

(c) To renew a registration under this section, a person shall:

(i) pay the annual fee established under Subsection 7-1-401(5); and

(ii) submit a renewal statement containing the information described in Subsection (2)(d).

(d) A registration or renewal statement shall state:

(i) the name of the person;

(ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);

(iii) the address of the person's principal business office, which may be outside this state;

(iv) the addresses of all offices in this state at which the person extends title loans;

(v) if the person extends title loans in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;

(vi) the name and address in this state of a designated agent upon whom service of process may be made;

(vii) disclosure of any injunction, judgment, administrative order, or conviction of any crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person; ~~and~~

(viii) evidence satisfactory to the department that the person is registered with the nationwide database; and

~~[(viii)]~~ (ix) any other information required by the rules of the department.

(e) (i) The commissioner may impose an administrative fine determined under Subsection (2)(e)(ii) on a person if:

(A) the person is required to be registered under this chapter;

(B) the person fails to register or renew a registration in accordance with this chapter;

(C) the department notifies the person that the person is in violation of this chapter for failure to be registered; and

(D) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (2)(e)(i)(C).

(ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this Subsection (2)(e) is:

(A) \$500 if the person:

(I) has no office in this state at which the person extends a title loan; or

(II) has one office in this state at which the person extends a title loan; or

(B) if the person has two or more offices in this state at which the person extends a title loan, \$500 for each office at which the person extends a title loan.

(iii) The commissioner may reduce or waive a fine imposed under this Subsection (2)(e) if the person shows good cause.

(3) If the information in a registration or renewal statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:

(a) that person is required to renew the registration; or

(b) the department specifically requests earlier notification.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section:

(a) providing for the form, content, and filing of a registration and renewal statement[-]; and

(b) providing for the transition of persons registering with the nationwide database.

Section 6. Section 7-25-101 is enacted to read:

CHAPTER 25. MONEY TRANSMITTER ACT

Part 1. General Provisions

7-25-101. Title.

This chapter is known as the "Money Transmitter Act."

Section 7. Section 7-25-102 is enacted to read:

7-25-102. Definitions.

As used in this chapter:

(1) "Applicant" means a person filing an application for a license under this chapter.

(2) "Authorized agent" means a person designated by the licensee under this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

(3) "Executive officer" means the licensee's president, chair of the executive committee, executive vice president, treasurer, chief financial officer, or any other person who performs similar functions.

(4) "Key shareholder" means a person, or group of persons acting in concert, who is the owner of 20% or more of a class of an applicant's stock.

(5) "Licensee" means a person licensed under this chapter.

(6) "Material litigation" means litigation that, according to generally accepted accounting principles, is considered significant to a person's financial health and would be required to be referenced in an annual audited financial statement, report to shareholders, or similar document.

(7) "Money transmission" means the sale or issuance of a payment instrument or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including payment instrument, wire, facsimile, or electronic transfer.

(8) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.

(9) "Outstanding payment instrument" means a payment instrument issued by the licensee that has been sold in the United States directly by the licensee or a payment instrument issued by the licensee that has been sold and reported to the licensee as having been sold by an authorized agent of the licensee in the United States, and that has not yet been paid by or for the licensee.

(10) (a) "Payment instrument" means a check, draft, money order, travelers check, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable.

(b) "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(11) "Remit" means either to make direct payment of the money to the licensee or its representatives authorized to receive the money, or to deposit the money in a depository institution in an account in the name of the licensee.

Section 8. Section **7-25-103** is enacted to read:

7-25-103. Rules.

The commissioner may make a rule authorized by this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including to:

- (1) restrict or prohibit practices that are misleading, unfair, or abusive;
- (2) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and a money transmitter; and
- (3) promote or assure uniform application of or to resolve ambiguities in applicable

state or federal laws or federal regulations.

Section 9. Section 7-25-201 is enacted to read:

Part 2. Licensing

7-25-201. Licensing required.

(1) Unless exempt under Section 7-25-202, a person may not engage in the business of money transmission without a license.

(2) A licensee may conduct its business in this state at one or more locations, directly or indirectly owned, or through one or more authorized agents, or both, pursuant to the single license granted to the licensee.

Section 10. Section 7-25-202 is enacted to read:

7-25-202. Exemptions.

This chapter does not apply to:

(1) the United States or a department or agency of the United States;

(2) the state or a political subdivision of the state; or

(3) a depository institution or a trust company organized under the laws of a state or the United States.

Section 11. Section 7-25-203 is enacted to read:

7-25-203. License qualifications.

(1) An applicant for a license shall:

(a) demonstrate, and a licensee shall maintain, a net worth of not less than \$1,000,000 as demonstrated by a financial statement for the most recent fiscal year that is prepared and certified by an independent auditor and is satisfactory to the commissioner; and

(b) demonstrate experience, character, and general fitness to command the confidence of the public and warrant the belief that the business to be operated will be operated lawfully and fairly.

(2) A corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. A noncorporate applicant shall, at the time of the filing of an application for a

license under this chapter and at all times after a license is issued, be qualified to do business in the state.

(3) Subject to the commissioner's discretion, a person may not be licensed under this chapter to do business in the state:

(a) if the person has been convicted of, or pled guilty or no contest to, a felony:

(i) during the seven years preceding the day on which the individual files an application; or

(ii) at any time, if the felony involves an act of:

(A) fraud;

(B) dishonesty;

(C) breach of trust; or

(D) money laundering; or

(b) if an executive officer, key shareholder, or director of the person has been convicted of, or pled guilty or no contest to, a felony:

(i) during the seven years preceding the day on which the individual files an application; or

(ii) at any time, if the felony involves an act of:

(A) fraud;

(B) dishonesty;

(C) breach of trust; or

(D) money laundering.

(4) The applicant shall submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.

(5) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons being licensed under this chapter.

Section 12. Section **7-25-204** is enacted to read:

7-25-204. License application -- Bond.

(1) To apply for a license under this chapter, a person shall:

(a) submit an application in writing;

(b) pay the original license fee required by Section 7-1-401; and

(c) submit a surety bond in accordance with Subsection (3).

(2) An application shall contain:

(a) the exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) the history of the applicant's material litigation and criminal convictions for the seven-year period before the date the application is submitted;

(c) a description of the activities conducted by the applicant and a history of operations;

(d) a description of the business activities in which the applicant seeks to be engaged in the state;

(e) a list identifying the applicant's authorized agents in the state, if any, at the time of the filing of the license application;

(f) a sample authorized agent contract, if applicable;

(g) a sample form of payment instrument, if applicable;

(h) the one or more locations at which the applicant and its authorized agents, if any, propose to conduct the licensed activities in the state; and

(i) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) An applicant shall submit with an application filed under this chapter a surety bond satisfactory to the commissioner in the minimum sum of \$50,000 to reimburse the state for expenses of any kind or nature that the department may incur in connection with an administrative or judicial proceeding against a licensee, former licensee, or seller relating to the issuance or sale of a payment instrument in the state.

(b) A licensee shall maintain a surety bond meeting the requirements of Subsection

394 (3)(a) for three years after the licensee ceases money transmission operations in the state.

395 Except that the commissioner may permit the surety bond to be reduced or eliminated before
396 the end of the three-year period to the extent that the amount of the licensee's payment
397 instruments outstanding in this state are reduced.

398 (c) A surety bond shall remain in effect until cancellation, which may occur only after
399 30 days' written notice to the commissioner. Cancellation may not affect liability incurred or
400 accrued during that period.

401 Section 13. Section **7-25-205** is enacted to read:

402 **7-25-205. Issuance of license.**

403 (1) Upon the filing of a complete application, the commissioner shall investigate the
404 financial condition and responsibility, financial and business experience, character, and general
405 fitness of the applicant. The commissioner may conduct an on-site investigation of the
406 applicant, the reasonable cost of which is to be borne by the applicant in accordance with
407 Subsection [7-1-401](#)(7).

408 (2) The commissioner shall issue a license to the applicant authorizing the applicant to
409 engage in the licensed activities in this state if the commissioner finds that:

410 (a) the applicant's business will be conducted honestly, fairly, and in a manner
411 commanding the confidence and trust of the community;

412 (b) the applicant has fulfilled the requirements imposed by this chapter; and

413 (c) the applicant has paid the required original license fee under Section [7-1-401](#).

414 Section 14. Section **7-25-206** is enacted to read:

415 **7-25-206. Renewal of license.**

416 (1) A license issued or renewed pursuant to this chapter expires on December 31. A
417 licensee may renew the license through the nationwide database for the ensuing 12-month
418 period upon application by the license holder showing continued compliance with the
419 requirements of Sections [7-25-201](#), [7-25-203](#), and [7-25-204](#), and the payment of the license
420 renewal fee required by Section [7-1-401](#) to the commissioner.

421 (2) The licensee shall include in its renewal application:

(a) a copy of the licensee's most recent audited unconsolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, except that a licensee may provide the most recent audited consolidated annual financial statement of the parent corporation if the statement separately includes the balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes of financial position of the licensee;

(b) material changes to the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;

(c) a list of the locations within this state at which business regulated by this chapter is conducted by either the licensee or its authorized agent;

(d) notification of material litigation or litigation relating to money transmission; and

(e) other information the commissioner requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) Failure to pay the renewal fee or to submit a completed renewal application between November 1 and December 31 shall cause the license to expire at the close of business on December 31.

Section 15. Section **7-25-301** is enacted to read:

Part 3. Operational Requirements

7-25-301. Reporting requirements.

(1) Within 15 days of the occurrence of an event listed in this Subsection (1), a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in the state;

(a) the filing for bankruptcy or reorganization by the licensee;

(b) the institution of revocation or suspension proceedings against the licensee by a state or governmental authority with regard to the licensee's money transmission activities;

(c) a felony indictment of the licensee or any of its officers, directors, or principals

related to money transmission activities;

(d) a felony conviction of the licensee or any of its officers, directors, or principals related to money transmission activities; and

(e) any other event that the commissioner may determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) An authorized agent shall report to the licensee the theft or loss of payment instruments valued at \$5,000 or more within 24 hours from the time the authorized agent knew or should have known of the theft or loss. Upon the receipt of the report, the licensee shall immediately provide the information to the commissioner.

Section 16. Section **7-25-302** is enacted to read:

7-25-302. Changes in control of a licensee.

(1) A change in control of a licensee shall require prior notice to the commissioner. In the case of a publicly traded corporation, notification shall be made in writing within 15 days of a change or acquisition of control of a licensee. Upon notification, the commissioner may require information considered necessary to determine whether an application for a license is required. The commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose a risk to the interests of the public.

(2) Whenever control of a licensee is acquired or exercised in violation of this section, the license of the licensee shall be considered revoked as of the date of the unlawful acquisition of control. The licensee, or its controlling person, shall surrender the license to the commissioner on demand.

Section 17. Section **7-25-303** is enacted to read:

7-25-303. Authorized agent contracts.

A licensee desiring to conduct licensed activities through authorized agents shall authorize each authorized agent to operate pursuant to an express written contract, which shall, at a minimum, provide the following:

(1) that the licensee appoints the person as its agent with authority to sell payment instruments or transmit money on behalf of the licensee in compliance with state and federal

478 law;

479 (2) that neither a licensee nor an authorized agent may authorize a subagent without the
480 written consent of the commissioner;

481 (3) that licensees are subject to supervision and regulation by the commissioner;

482 (4) an acknowledgment that the authorized agent consents to the commissioner's
483 inspection, with or without prior notice to the licensee or authorized agent, of the records of the
484 authorized agent or agents of the licensee; and

485 (5) that an authorized agent is under a duty to act only as authorized under the contract
486 with the licensee and that an authorized agent who exceeds its authority is subject to
487 cancellation of its contract by the licensee and disciplinary action by the commissioner.

488 Section 18. Section **7-25-304** is enacted to read:

489 **7-25-304. Authorized agent conduct.**

490 (1) An authorized agent may not make a fraudulent or false statement or
491 misrepresentation to a licensee or to the commissioner.

492 (2) A money transmission, sale, or issuance of payment instrument activity conducted
493 by an authorized agent shall be strictly in accordance with the licensee's written procedures
494 provided to the authorized agent.

495 (3) An authorized agent shall remit the money owing to the licensee in accordance with
496 the terms of the contract between the licensee and the authorized agent. The failure of an
497 authorized agent to remit money owing to a licensee within the contractual time period shall
498 result in liability of the authorized agent to the licensee for three times the licensee's actual
499 damages. The commissioner shall have the discretion to set, by rule made in accordance with
500 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the maximum remittance time.

501 (4) The money, less fees, received by an authorized agent of a licensee from the sale or
502 delivery of a payment instrument issued by a licensee or received by an authorized agent for
503 transmission shall, from the time the money is received by the authorized agent until the time
504 when the money or an equivalent amount is remitted by the authorized agent to the licensee,
505 constitute trust funds owned by and belonging to the licensee. If an authorized agent

commingles the money with any other money or property owned or controlled by the authorized agent, the commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Section 19. Section **7-25-305** is enacted to read:

7-25-305. Instrument to bear name of licensee.

A payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

Section 20. Section **7-25-401** is enacted to read:

Part 4. Enforcement

7-25-401. Examinations.

(1) (a) The commissioner may conduct periodic on-site examinations of a licensee. The commissioner may examine a licensee's authorized or apparent agents. At the commissioner's discretion, written notice of the examination may be provided to the licensee or an authorized or apparent agent.

(b) In conducting an examination, the commissioner or the commissioner's staff:

(i) shall have full and free access to all the records of the licensee and its authorized or apparent agents; and

(ii) may summon and qualify as witnesses, under oath, and examine the directors, officers, members, agents, and employees of a licensee or authorized or apparent agent, and any other person concerning the condition and affairs of the licensee.

(c) In accordance with Section [7-1-401](#), the licensee shall pay the reasonable costs of an examination under this section.

(d) An on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states.

(e) The commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and a report so accepted is considered for all purposes as an official report of the commissioner.

(2) Upon reasonable cause, the commissioner may conduct an on-site examination of an unlicensed person to determine whether violations of this chapter have occurred or are occurring. In conducting the examination, the commissioner has the applicable powers provided pursuant to Section 7-25-204.

Section 21. Section **7-25-402** is enacted to read:

7-25-402. Confidentiality of information.

(1) Information obtained by the commissioner under this chapter is confidential in accordance with Section 7-1-802.

(2) Subsection (1) does not prohibit the commissioner from releasing to the public a list of persons licensed under this chapter or from releasing aggregated financial data on the licensees.

Section 22. Section **7-25-403** is enacted to read:

7-25-403. Termination or suspension of authorized agent activity.

(1) (a) The commissioner may issue an order suspending or barring an authorized agent from continuing to be or becoming an authorized agent of a licensee during the period for which the order is in effect, if subject to Title 63G, Chapter 4, Administrative Procedures Act, the commissioner finds that an authorized agent of a licensee or a director, officer, employee, or controlling person of the authorized agent has:

(i) violated this chapter or a rule or order issued under this chapter;

(ii) engaged or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or

(iii) made or caused to be made in an application or report filed with the commissioner or a proceeding before the commissioner, a statement that was at the time and in the circumstances under which it was made, false or misleading with respect to a material fact, or has omitted to state in the application or report a material fact that is required to be stated in the application or report.

(b) Upon issuance of the order, the licensee shall terminate its relationship with the

562 authorized agent according to the terms of the order.

563 (2) An authorized agent to whom an order is issued under this section may apply to the
564 commissioner to modify or rescind the order. The commissioner may not grant the application
565 unless the commissioner finds that it is in the public interest to do so and that it is reasonable to
566 believe that the person will, if and when the person is permitted to resume being an authorized
567 agent of a licensee, comply with all applicable provisions of this chapter and a rule or order
568 issued under this title.

569 Section 23. Section **7-25-404** is enacted to read:

570 **7-25-404. Licensee liability.**

571 A licensee's responsibility to a person who purchases a payment instrument or money
572 transmission transaction from a licensee or a licensee's authorized agent is limited to the face
573 amount of the payment instrument or money transmission transaction purchased.

574 Section 24. Section **7-25-405** is enacted to read:

575 **7-25-405. Criminal and civil penalties.**

576 (1) A person who violates this chapter or who files materially false information with a
577 license application or renewal under this chapter is:

578 (a) guilty of a class B misdemeanor; and

579 (b) subject to revocation of the person's license under this chapter.

580 (2) Subject to Title 63G, Chapter 4, Administrative Procedures Act, if the
581 commissioner determines that a person is engaging in the business of money transmission in
582 violation of this chapter, the commissioner may:

583 (a) suspend, revoke, or not renew that person's license under this chapter;

584 (b) issue a cease and desist order from committing any further violation;

585 (c) prohibit the person from continuing to engage in the business of money
586 transmission;

587 (d) impose an administrative fine not to exceed \$1,000 per violation, except that the
588 aggregate total of fines imposed under this chapter against a person in a calendar year may not
589 exceed \$30,000 for that calendar year; or

(e) take any combination of actions listed under this Subsection (2).

(3) If the commissioner revokes a license, the department is not required to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee is paid.

Section 25. Section **7-25-406** is enacted to read:

7-25-406. Consent orders -- Emergency order.

(1) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule or order made or issued under this chapter, has been violated, nor need it constitute a finding by the commissioner that the person has violated any provision of this chapter or any rule or order made or issued under this chapter.

(2) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(3) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken, which is filed with the commissioner within 20 days of the receipt of the notice of the commissioner's emergency action.

Section 26. Section **7-25-407** is enacted to read:

7-25-407. Required deposits.

If the commissioner finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution acceptable to the commissioner in such amounts, for such period, and upon such conditions as the commissioner may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah

in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

Section 27. Section **70D-2-102** is amended to read:

70D-2-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(b), "broker" means a person who in the regular course of business assists a person in obtaining a mortgage loan for a fee or other consideration paid directly or indirectly.

(b) "Broker" does not include a person solely because of the person's:

(i) real estate brokerage activities; or

(ii) activities as an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.

(2) "Business as a lender, broker, or servicer" means a person who engages in an act for compensation or in the expectation of compensation that makes the person a lender, broker, or servicer.

(3) (a) Except as provided in Subsection (3)(b), "lender" means a person who in the regular course of business originates a loan secured by a mortgage.

(b) "Lender" does not include a person who:

(i) as a seller only receives one or more mortgages as security for a purchase money obligation; or

(ii) only receives a mortgage as security for an obligation:

(A) payable on an installment or deferred payment basis; and

(B) arising out of materials furnished or services rendered in the improvement of real property.

(4) "Manufactured home" means a transportable factory built housing unit that:

(a) is constructed:

(i) on or after June 15, 1976, according to the National Manufactured Housing Construction and Safety Standards Act of 1974; and

(ii) in one or more sections, which:

(A) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or

(B) when erected on site, is 400 or more square feet;

(b) is built on a permanent chassis;

(c) is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and

(d) includes the plumbing, heating, air-conditioning, and electrical systems.

(5) "Mobile home" means a transportable factory built housing unit built before June 15, 1976, in accordance with a state mobile home code that existed before the National Manufactured Housing Construction and Safety Standards Act of 1974.

(6) "Modular home" means a modular unit as defined in Section 15A-1-302.

(7) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.

[({7})] (8) "Permanently affixed" means anchored to, and supported by, a permanent foundation or installed in accordance with the manufactured housing installation standard code referred to in Section 15A-1-202.

[({8})] (9) "Servicer" means a person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan.

Section 28. Section 70D-2-201 is amended to read:

70D-2-201. Registration -- Exemptions.

(1) (a) Except as provided in Subsection (2), a person may not engage in business as a lender, broker, or servicer in this state before the day on which the person:

~~[(a) files written notification with the commissioner in accordance with Section 70D-2-202; and]~~

(i) provides evidence satisfactory to the commissioner that the person is registered with the nationwide database; and

[~~(b)~~] (ii) pays a fee required by Section 70D-2-203.

(b) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

(2) The following persons are exempt from this part, except for a reimbursement or fee described in Subsection 70D-2-203(2):

(a) a federally insured depository institution;

(b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a); and

(c) a person who:

(i) is required to be licensed with the Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

(ii) is not a servicer.

Section 29. Section 70D-2-203 is amended to read:

70D-2-203. Fees -- Examination.

(1) (a) A person required to ~~[file notification]~~ register under this part shall pay to the commissioner:

(i) a fee of \$200 with the person's initial ~~[notification]~~ registration; and

(ii) an annual fee, on or before ~~[January]~~ December 31 of each year, in an amount to be set by rule of the commissioner subject to Subsection (1)(b).

(b) The commissioner:

(i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount that generates sufficient revenue to cover the department's costs of administering this chapter; and

(ii) may not set an annual renewal fee that exceeds \$100 per renewal.

(2) (a) The commissioner may require a lender, broker, or servicer to make a record of the lender, broker, or servicer relating to its activities as a lender, broker, or servicer available to the commissioner or the commissioner's authorized representative for examination.

(b) A lender, broker, or servicer described in Subsection (2)(a) shall:

702 (i) reimburse the department for travel and other reasonable and necessary costs
703 incurred in the examination described in Subsection (2)(a); and
704 (ii) pay to the commissioner a fee set by the commissioner based on an hourly rate per
705 each examiner, not to exceed \$55 per hour for each examiner.

706 (3) No portion of a fee paid or owed to the commissioner under this section is
707 refundable because a person voluntarily or involuntarily ceases to do business as a lender,
708 broker, or servicer:

709 (a) during the period covered by the fee; or
710 (b) before the time of an examination by the commissioner of a record pertaining to a
711 transaction preceding the day on which the person ceases to do business as a lender, broker, or
712 servicer.

713 Section 30. **Repealer.**
714 This bill repeals:
715 Section **70D-2-202**, **Form of notice.**