



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2012 Sunset Review: Colorado Money Transmitters Act

October 15, 2012





Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2012

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Money Transmitters Act. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2013 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 52 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Banking and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director





John W. Hickenlooper.
Governor

Barbara J. Kelley
Executive Director

2012 Sunset Review: Colorado Money Transmitters Act

Summary

What Is Regulated?

The Colorado Money Transmitters Act (Act) provides regulatory oversight of licensed money transmitters. Licensed money transmitters provide a mechanism for individuals and businesses (originator) to transmit money to one another (beneficiary).

Why Is It Regulated?

The purpose of the Act is to provide protection to consumers who choose to transmit money through a licensed money transmitter by requiring a surety bond, undergoing examinations conducted by Division of Banking (Division) staff and submitting financial statements to the Division.

Who Is Regulated?

In fiscal year 10-11, there were 53 licensed money transmitters.

How Is It Regulated?

The Act is enforced by the Banking Board (Board). The Board is a Type 1, policy autonomous board with the authority to impose discipline on licensed money transmitters, promulgate rules and establish policy.

What Does It Cost?

In fiscal year 10-11, the total expenditures for the oversight of licensed money transmitters were \$254,764. There were 3.0 full-time equivalent employees associated with this regulatory oversight.

What Enforcement Activity Is There?

In fiscal years 06-07 through 10-11, there were a total of three enforcement actions imposed by the Board: one memorandum of understanding, one board resolution and one suspension.

Key Recommendations

Continue the Act for 11 years, until 2024.

The purpose of the Act is to provide consumer protection in money transfer transactions from licensed money transmitters. Money transmitters provide a mechanism for individuals and businesses to transmit money to one another. In order to provide consumer protection, the Act requires each licensed money transmitter to obtain a surety bond, generally for \$1 million. Licensed money transmitters are also required to undergo examinations by Division staff as well as provide financial statements. These regulatory elements offer oversight sufficient to insulate consumers from harm. This is evidenced by the relatively few enforcement actions imposed on licensed money transmitters in fiscal years 06-07 through 10-11. As such, the General Assembly should continue the Act for 11 years, until 2024.

Clarify in the Act that the Board has the authority to investigate any person(s) believed to be engaging in money transmission without a license.

In order to provide money transmitter services to consumers, the Act requires a person to obtain a license from the Division. The Act, however, does not clearly delineate that the Board has the authority to investigate a person who is suspected of operating as a money transmitter without a license. Therefore, the General Assembly should clarify that the Board has the explicit authority to investigate a person who may be operating as a money transmitter without a license.

Major Contacts Made During This Review

Colorado Banking Board Members
Colorado Division of Banking
Tempo Financial Holdings Corporation
Western Union

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.askdora.colorado.gov.

The regulatory functions of the Colorado Money Transmitters Act (Act) as enumerated in Article 52 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the Act pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of licensed money transmitters should be continued for the protection of the public and to evaluate the performance of the Banking Board (Board) and the Division of Banking (Division). During this review, the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board members and Division staff, reviewed complaint and disciplinary actions, interviewed licensed money transmitters and national professional associations, reviewed Colorado statutes and money transmitter rules, and reviewed the laws of other states.

Profile of the Profession

The Act provides regulatory oversight of money transmitters by the Board and the Division. Specifically, in order to function as a money transmitter in Colorado, the entity must obtain a license from the Board, except for entities that are excluded in section 12-52-105, C.R.S., which include corporations organized under the general banking, savings and loan or credit union laws—both state and federally chartered.

Licensed money transmitters provide a mechanism for individuals and businesses (originator) to transmit (exchange or transfer) money to one another (beneficiary). There are a variety of types of instruments that categorize a money exchange. For example, an “exchange” is where an originator utilizes a licensed money transmitter to purchase a money order. In this example, the originator “exchanges” money (typically cash) to the licensed money transmitter, and the licensed money transmitter, in turn, issues a money order.

Money transmission means the sale or issuance of exchange or receiving money for transmission or transmitting (transfer) money within the United States or locations abroad by any and all means, including but not limited to wire, facsimile or electronic transfer.²

The main purpose of money transmitters (either by exchange or transfer) is to provide money services to clients in a secure fashion.³

Licensed money transmitters can be divided into two categories: traditional and non-traditional. Traditional money transmitters include the following types of money transmission:

Money transfer and person-to-person payments:

1. Wire remittance (e.g., Western Union, i-Transfer, etc.) An originator brings money to an agent location (e.g., a supermarket), and the agent completes the required information into the money transfer form (electronically). The money transmitter (via the bank it utilizes) transfers the money to a bank account where the beneficiary is located, either domestically or internationally. The beneficiary goes to an agent location and receives the funds.
2. Foreign exchange and global payment services (e.g., Custom House (USA) Ltd.) This type of transaction is primarily business-to-business and accomplished through an automated clearing house transactions directly from the business bank account. Funds are deposited into the licensee’s bank account and the licensee then pays the payer’s bill in foreign currency through the licensee’s correspondent banking relationships.
3. Money orders/draft payment (e.g., MoneyGram Payment Systems, Inc.) This type of money transmission occurs when a company issues its own money orders or drafts for negotiable purposes. The payment instrument can be deposited into the payee’s bank account and is cleared through the normal bank channels.

² § 12-52-103(4.3), C.R.S.

³ WiseGEEK. *What Does a Money Transmitter Do?* Retrieved May 24, 2012, from <http://www.wisegeek.com/what-does-a-money-transmitter-do.htm>

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4. Online wire remittance (e.g., Xoom Corporation) – This transmission product is essentially like regular wire remittance. However, these types of licensees conduct transmissions solely online through the use of credit cards. The funds are transferred through normal credit card networks (Visa, MasterCard, American Express, etc.) to the licensee’s bank account, and the bank then transmits the funds to the destination country to a system of paying agents.

Non-traditional licensed money transmitters include:

- Prepaid card transactions;
- Online bill pay;
- Walk-in bill pay;
- Payroll processors; and
- Mobile payment.

1. Prepaid card transactions (e.g., Green Dot Corporation) – These transactions occur when an originator purchases a prepaid card in a store from an agent. The money transmitter authorizes a pre-determined amount of money on the card. The cards draw on funds from the money transmitter’s pooled bank account. Prepaid cards can either be for one-time use or can be reloaded. All of the funds are accessed from the prepaid cards through the issuing bank’s affiliation with various cardholder networks, such as Visa, MasterCard, American Express, etc.

The prepaid card transactions described above do not include merchant specific cards such as Starbucks and Target.

2. Online bill payment (e.g., PayPal) – An originator (consumer) creates an account, pays the bill through the money transmitter, and the money transmitter, in turn, debits the originator’s account and pays the beneficiary (company or individual).
3. Walk-in bill payment (e.g., CheckFreePay Corporation) – An originator visits an agent location (e.g., supermarket), and the agent completes the necessary paperwork (typically electronically) to transfer money (usually cash) to pay a bill. The money transmitter pays the beneficiary and debits the agent’s account (minus the agent’s fee).
4. Payroll processors (e.g., Paychex, Inc.) – Payroll processors receive funds for payroll disbursements several days in advance of the payment date through either automated clearing house transactions or wire transfers. These funds are then disbursed to employees of the contracted business in the form of payroll cards, checks or direct deposits.

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5. Mobile payments (e.g., Obopay, Inc.) – These money transmitters operate essentially the same as online bill payments, except transactions can be conducted through applications loaded on mobile devices such as smart phones.

Legal Framework

History of Regulation

The Colorado Money Transmitters Act (originally titled the Colorado Money Order Act) was enacted by the General Assembly in 1959. The enacting legislation vested regulatory oversight of the money order industry with the Commissioner of Banking (Commissioner). Initially, in order to obtain a money order license, an applicant was required to post a \$10,000-bond and an additional \$10,000 for each additional outlet, up to a maximum of \$50,000.⁴

Since the enactment of the original money order act, the regulatory oversight of the industry has continually evolved. The Department of Regulatory Agencies has completed two sunset reviews of the Act, in 1993 and 2003, respectively.

One notable recommendation in the 1993 sunset review was to require a licensee who fails to provide an annual statement or report to the Commissioner to pay a fine of \$250 per day of the delinquency. The General Assembly subsequently passed the recommendation in the 1994 legislative session.

The 2003 sunset review recommended amending the title of the act from the “Money Order Act” to the “Money Transmitters Act.” According to the 2003 sunset review, the “Money Order Act” did not completely reflect the various types of money transmission options available to consumers, such as wire transfers. As such, the 2003 sunset review recommended to the General Assembly that the title of the act be amended to the “Money Transmitters Act.” The new title is broader and more accurately reflects the content of the statute and the industry it regulates. The General Assembly passed the recommendation in the 2004 legislative session.

⁴ Colorado Department of Regulatory Agencies. 2003 Money Order Sunset Review. p.4.

Federal Laws

Bank Secrecy Act

The Bank Secrecy Act (BSA) was originally enacted by Congress in 1970. The purpose of the BSA is to fight money laundering and other financial crimes.⁵ Money laundering is the process of making illegally-gained proceeds (i.e., “dirty money”) appear legal (i.e., “clean”).⁶ Typically, money laundering involves three steps: placement, layering and integration.⁷ Placement of funds occurs where the illegitimate funds are furtively introduced into the legitimate financial system.⁸

Layering occurs when the money is moved around to create confusion, sometimes by wiring or transferring the funds through numerous accounts.⁹

Integration occurs when the funds are integrated into the financial system through additional transactions until the “dirty” money appears “clean.”¹⁰

To ensure that money laundering is effectively monitored, the BSA has specific recordkeeping requirements for businesses that engage in money transactions such as wire transfers. For example, a money transaction business must file a currency transaction report (CTR) within 15 days whenever a transaction or series of transactions in currency involves more than \$10,000 in either cash-in or cash-out and is conducted, on behalf of, or by the same person on the same day.¹¹

⁵ Financial Crimes Enforcement Network U.S. Department of the Treasury, Washington D.C. *Bank Secrecy Act Requirements*. Retrieved May 3, 2012, from http://www.fincen.gov/financial_institutions/msb/materials/en/bank_reference.html

⁶ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

⁷ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

⁸ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

⁹ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

¹⁰ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

¹¹ Financial Crimes Enforcement Network U.S. Department of the Treasury, Washington D.C. *Bank Secrecy Act Requirements*. Retrieved May 3, 2012, from http://www.fincen.gov/financial_institutions/msb/materials/en/bank_reference.html

Money transfer businesses providing money transfer services must obtain and record specific information for each money transfer of \$3,000 or more, including, but not limited to:¹²

- Customer identification; and
- Customer and transaction information.

These records must be retained for five years from the date of the transaction.

Additionally, money transfer businesses that sell money orders or traveler's checks are required to record cash purchases involving \$3,000 to \$10,000,¹³ and any purchases over \$10,000 require the money transfer business to file a CTR.

Money Laundering Control Act

The Money Laundering Control Act (MLCA) was enacted by Congress in 1986. The MLCA, among other things, established that money laundering was a crime.¹⁴ For example, as highlighted in the MLCA, involvement in a financial transaction where the proceeds are from an unlawful activity is subject to both criminal and civil penalties. More specifically, avoiding transaction reporting requirements is subject to fine of not more than \$500,000 or twice the value of the property involved in the transaction, or imprisonment for not more than 20 years, or both.¹⁵

State Laws

Money Laundering Law

Colorado's money laundering law is located in section 18-5-309, *et seq.*, Colorado Revised Statutes (C.R.S.). The purpose of the law, among other things, is to provide criminal penalties for money laundering. Specifically, violating Colorado's money laundering law is a Class 3 felony. That is, a person commits money laundering if he or she conducts or attempts to conduct a financial transaction that involves money or any other thing of value that he or she knows or believes to be the proceeds of a criminal offense.¹⁶

¹² Financial Crimes Enforcement Network U.S. Department of the Treasury, Washington D.C. *Bank Secrecy Act Requirements*. Retrieved May 3, 2012, from http://www.fincen.gov/financial_institutions/msb/materials/en/bank_reference.html

¹³ Financial Crimes Enforcement Network U.S. Department of the Treasury, Washington D.C. *Bank Secrecy Act Requirements*. Retrieved May 3, 2012, from http://www.fincen.gov/financial_institutions/msb/materials/en/bank_reference.html

¹⁴ U.S. Department of the Treasury – Financial Crimes Enforcement Network. *History of Anti-Money Laundering Laws*. Retrieved May 7, 2012, from http://www.fincen.gov/news_room/aml_history.html

¹⁵ 18 U.S.C. § 1956(a)(1)(B).

¹⁶ § 18-5-309(1)(a), C.R.S.

Money Transmitters Act

The Act is created in section 12-52-101, *et seq.*, C.R.S. The purpose of the Act is to provide regulatory oversight of licensed money transmitters.

Licensing

Prior to engaging in the business of selling or issuing exchange or money transmission, each person or business is required to obtain a license from the Banking Board (Board).¹⁷ Exchange means any check, money order or other instrument for the transmission or payment of money or credit.¹⁸

Money transmission means the sale or issuance of exchange or receiving money for transmission or transmitting money within the United States or locations abroad by all means, including but not limited to: wire, facsimile or electronic transfer.¹⁹

However, licenses are not required for agents, sub-agents or representatives acting on behalf of a licensee in the sale of exchange by the licensee,²⁰ which include entities such as supermarkets.

In order to obtain a license from the Board, an applicant must complete an application to the Board, which includes, but is not limited to, the following:²¹

- The name and address (of the principal office);
- If the applicant has more than one branch, subsidiary, affiliate, agent or location, the Board requires the name and address of each location;
- Fingerprints for each of the owners, principal shareholders, principal members, directors, trustees, officers or other managing officials; and
- Financial statements.

All applicants must also provide information demonstrating that they possess the necessary qualifications and experience to obtain a license from the Board. Specifically, applicants must provide the following, including but not limited to:²²

- The history of the applicant's material litigation and criminal convictions, if any, for the previous five years;
- A description of the business activities in which the applicant seeks to be engaged while operating in Colorado;
- A list identifying the applicant's proposed agents in Colorado, if any;
- The location(s) of the applicant and its agents, if any; and
- The name and address of the clearing bank or banks on which the applicant's payment instruments will be payable.

¹⁷ § 12-52-104, C.R.S.

¹⁸ § 12-52-103(2), C.R.S.

¹⁹ § 12-52-103(4.3), C.R.S.

²⁰ § 12-52-104, C.R.S.

²¹ §§ 12-52-106(1)(a),(d),(d.5) and (2), C.R.S.

²² Money Transmitters Act Rule M04 (B)(1)(b)(c)(d)(e)(h)(i).

Bond Requirement

Once the Board approves an application for licensure, the applicant must furnish a corporate surety bond of at least \$1 million. However, the Board may reduce the \$1 million bond requirement, to an amount not less than \$250,000.²³

In addition to the bond requirement, the Board may require a money transmitter to possess investments that have an aggregate market value at least equal to the amount of outstanding payment instruments issued or sold by the licensee. Permissible investments include, but are not limited to:²⁴

- Cash;
- Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign; and
- Shares in a money market fund, interest-bearing bills, notes, bonds or stock traded on any national securities exchange or on a national over-the-counter market.

The Act also allows the Board to increase the bond requirement to an amount not to exceed \$2 million.²⁵ The Board may order an increase in the bond amount based on the following factors, including but not limited to:²⁶

- The nature and volume of the business and proposed business of the licensee;
- The amount, nature, quality and liquidity of the assets and liabilities of the licensee;
- The licensee's net worth; and
- The quality of the operations of the licensee.

Additionally, in lieu of the surety bond, licensed money transmitters may deposit securities with the Board if the securities have a total value equal to the amount of the required surety bond.²⁷ Securities must consist of general obligations of, or securities fully guaranteed by, the United States or any agency or corporation wholly owned by the United States.²⁸ Appropriate securities may also include direct general obligations of the State of Colorado, or any county, town, city, village, school district or other political subdivision or municipal corporation of the State of Colorado.²⁹

²³ §§ 12-52-107(1)(a) and (1)(b), C.R.S.

²⁴ § 12-52-107(3), C.R.S.

²⁵ § 12-52-107(1)(c), C.R.S.

²⁶ Money Transmitters Act Rule M01 (C)(1)(2)(3)(5)(7).

²⁷ § 12-52-107(2), C.R.S.

²⁸ § 12-52-107(2), C.R.S.

²⁹ § 12-52-107(2), C.R.S.

Examinations

The Commissioner is authorized to examine the books and records of licensees using risk-based criteria.³⁰ The books and records must include the following:³¹

- Record or records of payment instruments sold and money transmitted as required by the licensee's normal business practices;
- A general ledger containing all asset, liability, capital, income and expense accounts;
- Settlement sheets from agents, if any;
- Financial institution statements and reconciliation records;
- Records of outstanding payment instruments and money transmitted;
- Records of each payment instrument paid and money transmitted within a three-year period; and
- A list of names and addresses of all of the licensee's agents, as well as copies of each agent contract.

In lieu of an examination, the Commissioner may accept an audit performed by an independent certified public accountant or an independent registered accountant.³²

Additionally, each licensee is required to file, with the Commissioner, an annual financial statement audited by an independent certified public accountant or an independent registered accountant within 150 days following the close of the licensee's fiscal year.³³ Financial statements must include:³⁴

- A balance sheet;
- A profit and loss statement; and
- A statement of retained earnings of the licensee and the licensee's agents and sub-agents.

In addition to the annual financial statement requirement, licensees must file a minimum of three reports during the calendar year.³⁵ The reports must detail the resources and liabilities of the licensee.³⁶

³⁰ § 12-52-110(1)(a), C.R.S.

³¹ Money Transmitters Act Rule M03 (B)(1-7).

³² 12-52-110(1)(b), C.R.S.

³³ § 12-52-110(2)(a), C.R.S.

³⁴ § 12-52-110(2)(a), C.R.S.

³⁵ § 12-52-110(2)(b), C.R.S.

³⁶ § 12-52-110(2)(b), C.R.S.

Enforcement Authority

The Board is responsible for imposing discipline on licensees for violations of the Act. Specifically, section 12-52-112(1), C.R.S., authorizes the Board to revoke a money transmitter's license if:³⁷

- The licensee has failed to maintain the required bond;
- The licensee has failed to comply with any order, decision or finding of the Board or the Commissioner;
- The licensee has violated any provision of the Act;
- Facts exist that would have warranted the Board's refusal to issue an original license;
- The licensee has failed to maintain a separate bank deposit account or accounts for the exclusive payment of exchange issued; or
- The licensee has sold or issued exchange without receiving payment for the face value of the exchange.

³⁷ §§ 12-520112(2)(a-f), C.R.S.

Program Description and Administration

The Colorado Money Transmitters Act (Act) in section 12-52-101, *et seq.*, Colorado Revised Statutes, provides regulatory oversight of licensed money transmitters.

The regulation of licensed money transmitters is vested in the Banking Board (Board). The Board is a Type 1 board that is responsible for issuing licenses, imposing discipline on licensees, rulemaking and policymaking.

The Commissioner of Banking (Commissioner), as well as the Division of Banking (Division) staff, is responsible for completing examinations of licensees, reviewing financial statements and completing duties delegated to the Commissioner by the Board.

In fiscal year 10-11, the Division devoted 3.0 full-time equivalent (FTE) employees to provide examinations and administrative support for the regulatory oversight of licensed money transmitters. The FTE are as follows:

- Financial Credit Examiner (Supervising Examiner) - 0.50 FTE;
- Financial Credit Examiner III (Money Transmitter Examiners) - 2.0 FTE; and
- Administrative Assistant II - 0.50 FTE.

Table 1 highlights the total expenditures for the regulation of licensed money transmitters in fiscal years 06-07 through 10-11.

Table 1
Total Program Expenditures in Fiscal Years 06-07 through 10-11

Fiscal Year	Total Expenditures
06-07	\$240,648
07-08	\$222,052
08-09	\$225,501
09-10	\$230,873
10-11	\$254,764

As Table 1 illustrates, the total expenditures increased approximately two percent from fiscal year 06-07 to fiscal year 10-11. The increase is attributable to staff changes within the Division, including the addition of an Administrative Assistant II.

Licensing

The Act requires money transmitters to obtain a license prior to providing services to consumers. In order to receive a money transmitter's license from the Board, an applicant is required to complete a licensing application. All licensing applications must include the following:³⁸

- A financial report;
- Completed fingerprint cards for executive officer(s) or managers(s) who have responsibility for licensed activities;
- A history of operations, including a description of activities conducted;
- A sample agent contract, if applicable;
- A history of the applicant's material litigation and criminal convictions, if any, for the previous five years;
- The name and address of the clearing bank or banks on which the applicant's payment instruments will be payable; and
- A flow chart of funds from customer, to receiving agent, through the payment system of the applicant to the paying agent and recipient.

Once a license is approved by the Board, the applicant is required to submit a surety bond to the Board. The Act requires a \$1 million surety bond and the maximum bond requirement cannot exceed \$2 million. However, the Board has flexibility to lower the bond amount if an applicant meets certain parameters, but the bond cannot be less than \$250,000.

An applicant, in lieu of the surety bond, may deposit securities with the Board as long as the securities have a par value equal to the amount of the required surety bond.³⁹

³⁸ State of Colorado. Division of Banking. *Application Instructions for a Money Transmitters License*. p.1.

³⁹ § 12-52-107(2), C.R.S.

Table 2 highlights the total number of licensed money transmitters in calendar years 2007 through 2011.

Table 2
Total Number of Licensed Money Transmitters in Calendar Years 06-07 through 10-11

	Calendar Year 2007	Calendar Year 2008	Calendar Year 2009	Calendar Year 2010	Calendar Year 2011
Active Licensees at the Beginning of the Calendar Year	32	39	40	42	47
New Licenses Approved by the Board	8	6	4	8	8
Licenses Surrendered	1	5	2	3	2
Total Licensees at Year-End	39	40	42	47	53

As delineated in Table 2, the number of licensed money transmitters has increased approximately 36 percent from calendar year 2007 to 2011.

Currently, the fee to obtain a money transmitters license is \$7,500. However, if a license is granted by the Board between July 1 and December 31, the applicant is required to pay \$3,750.⁴⁰

Once licensed, money transmitters must renew their license annually (licenses expire on January 1). Currently, the money transmitters license renewal fee is \$2,500.⁴¹

Examinations

The Division conducts safety and soundness examinations on both traditional (e.g., wire transfers) and non-traditional (prepaid cards, electronic bill pay, etc.) licensed money transmitters. The Division utilizes on-site full scope and target (on-site or off-site) examinations.

⁴⁰ DORA Division of Banking. Colorado Division of Banking Fee Schedule. Retrieved December 14, 2011, from <http://www.dora.state.co.us/banking/feeschedule.html>

⁴¹ DORA Division of Banking. Colorado Division of Banking Fee Schedule. Retrieved December 14, 2011, from <http://www.dora.state.co.us/banking/feeschedule.html>

Full Scope Examinations

An on-site full scope examination is a comprehensive examination of licensed money transmitters, which focuses on almost every aspect of licensees' business. Specifically, an on-site full-scope examination focuses on compliance with federal and state laws, as well as an in-depth testing of the licensed money transmitter's systems, oversight capabilities, monitoring of transactions, agent selection and monitoring.⁴²

Only traditional licensed money transmitters are required to undergo on-site full scope examinations. An on-site full scope examination is completed within the first 18 months from when the licensee commences operations in Colorado. The Division utilizes two examiners for an on-site full scope examination, and it takes them approximately two weeks to complete the examination.⁴³

The Division utilizes a composite rating system from "1" to "5," where "1" is the best and "5" is the worst.

To achieve a composite rating of "1" a licensee must demonstrate during the full scope examination that any weaknesses are minor and can be handled in a routine manner by the board of directors and management.⁴⁴ Licensees who achieve a composite rating of "1" are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability.⁴⁵

Licensees who obtain a composite rating of "2" are fundamentally sound, and these businesses are capable of withstanding business fluctuations.⁴⁶ Also, these organizations are in substantial compliance with laws and regulations.⁴⁷

Licensees who are assessed a composite rating of "3" are generally less capable of withstanding business fluctuations, and may be in significant non-compliance with the laws and regulations.⁴⁸ These licensees' risk management practices may be less than satisfactory relative to the organization's size, complexity, and risk profile.⁴⁹

⁴² Colorado Division of Banking PowerPoint Presentation. *Money Transmitter Licenses and the Examination Process*. p.6.

⁴³ Division of Baking PowerPoint Presentation. *Money Transmitter Licensees and the Examination Process*. p.11.

⁴⁴ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-4.

⁴⁵ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-4.

⁴⁶ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-4.

⁴⁷ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-4.

⁴⁸ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-4.

⁴⁹ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.I-5.

Licensees who have a composite rating of “4” have demonstrated unsafe or unsound practices or conditions.⁵⁰ These licensees are generally not capable of withstanding business fluctuations, and there may be significant non-compliance with laws and regulations.⁵¹ Also, these licensees require close regulatory supervision, which means, in most cases, formal enforcement action by the Board is necessary to address the problem(s).⁵²

Licensees who are assessed a composite rating of “5” (the lowest rating) exhibit extremely unsafe and unsound practices or conditions; exhibit a critically deficient performance; and often contain inadequate risk management practices.⁵³ These licensees require ongoing regulatory oversight, and they pose a significant risk to consumers.⁵⁴

The frequency of on-site full scope examinations for licensees depends, in large part, on the composite rating assigned to them at the completion of their previous full scope examination. In all on-site full scope examinations, the Division may conduct the examination three months prior to or three months beyond the designated due date.⁵⁵

Licensees who have a composite rating of “1” or “2” and have not had any enforcement actions imposed on their license by the Board are typically scheduled for an examination every 36 months.

Additionally, licensees who have a composite rating of “1” or “2” but had a previous composite rating of “3,” “4,” or “5” and have not had any enforcement actions imposed by the Board, are scheduled for an on-site full scope examination every 18 months.⁵⁶

Licensees who have a composite score of “3,” “4,” or “5” are required to have an on-site full scope examination completed every 12 months.⁵⁷

Target Examinations

A target examination, as the name implies, focuses on certain areas related to licensed money transmitters. For example, a target examination may be conducted to review and analyze the licensee’s transactions to determine compliance with federal and state money laundering laws. Division examiners complete an on-site target examination for new traditional and non-traditional licensed money transmitters within the first six months of commencing operations in Colorado.⁵⁸ The purpose of the initial target examination, however, is to determine if the licensee has all necessary operational processes and personnel to operate in a safe and sound manner.⁵⁹

⁵⁰ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.1-5.

⁵¹ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.1-5.

⁵² Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.1-5.

⁵³ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.1-5.

⁵⁴ Colorado Division of Banking. Money Transmitter ROE Instructions Manual Update Memorandum 1-06. p.1-5.

⁵⁵ Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

⁵⁶ Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

⁵⁷ Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

⁵⁸ Colorado Division of Banking. Risk-Based Examination Scheduling. pp.7 and 8.

⁵⁹ Colorado Division of Banking. Risk-Based Examination Scheduling. p.7.

Once initial on-site target examinations are complete, non-traditional licensed money transmitters are required to submit to an annual off-site target examination. However, if Division examiners identify issues that could compromise consumer protections, they can order more frequent examinations of licensees.

Table 3 highlights the total number of examinations (both full scope and target) completed by Division examiners in fiscal years 06-07 through 10-11.

Table 3
Total Number of Examinations Completed in Fiscal Years 06-07 through 10-11

Money Transmitter Examinations	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Full Scope On-Site Examinations	4	13	5	9	7
Initial Target Examinations	6	8	4	1	8
Target Discretionary Examinations	1	0	0	1	0
Off-Site Target Examinations	6	7	16	13	15
Total Number of Examinations	17	28	25	24	30

As illustrated in Table 3, the total number of examinations completed by Division examiners increased from 17 in fiscal year 06-07 to 30 in fiscal year 10-11. The increase is attributable, in part, to the increase in the number of licensed money transmitters. The increased number of licensed money transmitters, of course, necessitates an increase in examinations.

Reports of Condition and Income

In addition to the required examinations highlighted above, all licensees are required to provide financial reports known as “Reports of Condition and Income” on a quarterly basis to the Division. The Division must receive the report within 60 days of the end of each quarter, or the licensee must pay a penalty of \$250 for each day the report is delinquent.⁶⁰ The report contains six parts:

- Transmission activity;
- Permissible securities (if applicable);
- Eligible securities deposited in lieu of surety bond (if applicable);
- Financial statements;
- Agent and/or branch list; and
- Certification of compliance with the Act.

⁶⁰ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.1.

The transmission activity includes the total money transmitted and exchange sold or issued by licensed money transmitters. The transmission activity portion of the quarterly report also requires licensed money transmitters to report information such as any transmissions and exchange sold or issued that are unpaid at the end of the quarter.⁶¹ Reporting transmission on a quarterly basis to the Division enables the Division to identify and address any abnormalities or inconsistencies with the activity of licensed money transmitters.

Licensed money transmitters who have been approved by the Board to cover outstanding payment instruments with a combination of surety bond and permissible investments (securities), are required to complete the information related to the securities, including:⁶²

- The identifying number of the securities;
- The issuer and a brief description of the securities;
- The current market value of the securities;
- The rating assigned to the securities; and
- The name of the rating service (e.g., Moody's).

Additionally, licensed money transmitters who have been approved by the Board to deposit securities with the Board, which are held by a custodian, in lieu of maintaining a surety bond, must complete the following information in their quarterly report:⁶³

- The identifying number of the securities;
- The issuer and a brief description of the securities;
- The current par value of the securities;
- The maturity date of the securities; and
- The name and address (city and state) of the custodian(s).

Quarterly reports must also include financial statements that reflect the fair presentation of the company's financial condition.⁶⁴ More specifically, licensed money transmitters must provide a balance sheet that includes all asset, liability and capital categories.⁶⁵ Licensees are required to provide an income statement that includes all income and expenses of the company for the calendar year-to-date.⁶⁶

⁶¹ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.1.

⁶² State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

⁶³ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

⁶⁴ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

⁶⁵ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

⁶⁶ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

If applicable, quarterly reports must include a comprehensive list of current agents and/or branches.⁶⁷

Finally, a licensee or an authorized representative is required to sign a declaration that during the quarter, the company has operated in conformance with the Act and the rules.⁶⁸

Complaints/Enforcement Actions

There have been relatively few complaints to the Board concerning licensed money transmitters in Colorado. Table 4 highlights that number and the nature of the complaints in fiscal years 06-07 through 10-11.

Table 4
Total Number of Complaints Concerning Licensed Money Transmitters in Fiscal Years 06-07 through 10-11

Nature of Complaint	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Money Order	0	2	4	1	5
Charge/Refund	0	2	1	0	1
Unauthorized Transaction	0	0	4	3	3
Access to Funds	0	1	4	3	3
Internet Banking/Wire Transfer	0	0	1	0	1
Other	0	0	0	1	1
Total	0	5	14	8	14
Total Dollars Saved for Consumers	0	\$19,690	\$1,507	\$1,000	\$4,385

As illustrated in Table 4, the most common complaint received related to licensed money transmitters in fiscal years 06-07 through 10-11 is “money order.” Typically, “money order” complaints are for instances where money orders are lost or misplaced. When this occurs licensed money transmitters have specific processes in place in order to issue a replacement money order.

⁶⁷ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.2.

⁶⁸ State of Colorado, Division of Banking. *Instructions Money Transmitter Company Report of Condition and Income*. p.3.

Two other common complaints related to licensed money transmitters are “unauthorized transaction” and “access to funds.” An unauthorized transaction occurs when someone has gained unauthorized access to a consumer’s account. For example, a consumer may have his or her account accessed by a third party for purposes of accessing the funds in the account.

The “access to funds” complaints are focused on issues where a licensed money transmitter temporarily holds consumer funds if there are concerns with the funds or the manner in which they are being used (e.g., money laundering).

Typically, “charge/refund” complaints occur when a consumer purchases a money order and then attempts to obtain an immediate refund from the licensed money transmitter.

The “wire transfer” complaints were related to consumers who requested an expedited refund when they canceled wire transfer transactions.

Two complaints in the “other” category during the past five fiscal years were related to consumers’ concerns with poor customer service from licensed money transmitters.

Generally, “money saved” refers to consumers receiving refunds.

Additionally, Table 5 highlights the total number of enforcement actions imposed on licensed money transmitters in fiscal years 06-07 through 10-11.

Table 5
Total Enforcement Actions in Fiscal Years 06-07 through 10-11

Type of Action	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Board Resolution	0	1	0	0	0
Memorandum of Understanding (MOU)	1	0	0	0	0
Capital Directive	0	1	0	0	0
Suspension	0	0	0	1	0
Total	1	2	0	1	0

As illustrated in Table 5, there were nominally few enforcement actions imposed by the Board on licensed money transmitters during the five-year period. During fiscal year 06-07, the Board issued an MOU, which is an informal enforcement action, to a licensed money transmitter based in Minnesota for failing to have adequate compliance programs in place.

The Capital Directive was issued by the Board in fiscal year 07-08 to a licensed money transmitter that failed to maintain the required minimum capital, as outlined in the money transmitters rule MO4(B)(4), which requires licensed money transmitters to have a net worth of up to \$100,000. Also, in fiscal year 07-08, a licensed money transmitter adopted a board resolution, which is an informal enforcement action, to address compliance issues.

In fiscal year 09-10, the Board suspended a licensed money transmitter's license due to systemic issues with its ability to operate safely in Colorado.

Analysis and Recommendations

Recommendation 1 – Continue the Colorado Money Transmitters Act for 11 years, until 2024.

The first sunset criterion asks whether regulation is necessary to protect the health, safety and welfare of the public. The Colorado Money Transmitters Act (Act) requires that money transmitters obtain a license from the Banking Board (Board) prior to conducting business.

Money transmitters provide a mechanism for individuals and businesses (originator) to transmit (exchange or transfer) money to one another (beneficiary).

There are a variety of types of instruments that categorize a money exchange or transfer. For example, an “exchange” is where an originator utilizes a licensed money transmitter to purchase a money order. In this example, the originator “exchanges” money (typically cash) to the licensed money transmitter, and the licensed money transmitter, in turn, issues a money order.

Money transmission means the sale or issuance of exchange or receiving money for transmission or transmitting money within the United States or locations abroad by all means, including but not limited to wire, facsimile or electronic transfer.⁶⁹

The main purpose of licensed money transmitters is to provide money services to clients in a secure fashion.⁷⁰

There are currently three key requirements that provide protection to consumers: surety bond, examinations and quarterly reports. Each licensed money transmitter is required to secure a surety bond. The Board has flexibility to adjust the amount of the required surety bond from a minimum of \$250,000 (if certain requirements are met) to a maximum of \$2 million. The general starting point of a typical bond is \$1 million.

The bond requirement is an important element to ensure protection to consumers who utilize money transmission businesses. Since licensed money transmitters, as the title implies, handle consumers’ money, the surety bond provides monetary assurance that if a licensed money transmitter is unable to fulfill its financial obligations, consumers will be protected and able to recoup their money.

⁶⁹ § 12-52-103(4.3), C.R.S.

⁷⁰ WiseGEEK. *What Does a Money Transmitter Do?* Retrieved May 24, 2012, from <http://www.wisegeek.com/what-does-a-money-transmitter-do.htm>

There have not been any instances where the Division of Banking (Division) has made a claim against a licensed money transmitter's bond in the past five years. However, the Division has done so in the past when licensed money transmitters experienced financial issues. The surety bonds were sufficient to cover all of the outstanding obligations.

Also, Division staff conducts periodic examinations of licensed money transmitters to ensure, among other things, that they are in sound financial condition to provide services to consumers. The frequency of examinations on licensed money transmitters depends on their risk-based rating, which is established by Division staff from previous (sometimes the initial examination) examinations.

The risk-based scale features scoring from "1" to "5," where "1" is the best score and "5" is the worst score. The higher the score ("1" or "2") licensed money transmitters receive, the less frequently they are examined by Division staff. However, Division staff may increase the frequency of examinations for any licensed money transmitter if there are questions concerning the viability, such as the financial condition or compliance with the Act or applicable rules associated with the regulatory oversight of licensed money transmitters.

Periodic examinations of licensed money transmitters by Division staff are an effective mechanism to ensure regulatory compliance with the Act and applicable rules, including the financial stability of licensees.

The third requirement highlighted in the Act that provides enhanced consumer protection concerning licensed money transmitters is the quarterly report requirement. Specifically, the Act requires licensed money transmitters to submit "Report of Condition and Income" reports on a quarterly basis. The quarterly reports ensure, among other things, that licensed money transmitters are reporting to the Division the total amount of money transmitted or exchange sold or issued in Colorado for the given quarter. Doing so enables the Division to effectively monitor each licensed money transmitter and address any issues identified in the quarterly report.

The absence of regulatory oversight of licensed money transmitters in Colorado could compromise consumer protection. The three key regulatory elements highlighted in this recommendation offer oversight sufficient to insulate consumers from harm. This is evidenced by the relatively few enforcement actions imposed on licensed money transmitters in fiscal years 06-07 through 10-11.

As such, the General Assembly should continue the Act for 11 years, until 2024.

Recommendation 2 – Clarify in the Act that the Board has the authority to investigate any person(s) believed to be engaging in money transmission without a license.

Section 12-52-104, Colorado Revised Statutes (C.R.S.), states that a person is prohibited from operating as a money transmitter without obtaining a license from the Board.

Also, section 12-52-115.5(1)(a), C.R.S., authorizes the Board, if it has cause to believe that a person has sold or issued exchange or transmitted money without a money transmitter's license, to obtain a temporary restraining order or a preliminary or permanent injunction.

Although the Act authorizes the Board to obtain a restraining order or injunction against a person who is operating as a money transmitter without a license, the Act does not specifically delineate that the Board has the authority to investigate the unlicensed person to discern whether he or she is operating as a money transmitter without a license.

While there have not been any challenges to the Board's ability to investigate persons who may be operating as money transmitters without a license, adding the clarifying language could serve to avoid any issues related to the Board's authority to investigate unlicensed money transmitters in the future.

In order to clarify the Act related to the Board's authority to investigate unlicensed money transmitters, the General Assembly should revise section 12-52-104, C.R.S., to clarify that the Board has the explicit authority to investigate any person believed to be engaging in money transmission without a license.

Recommendation 3 – Extend the amount of time a licensed money transmitter is required to notify the Board of any increase in locations at which it conducts business from 10 days to the date on which its next quarterly report is due.

Section 12-52-111(1), C.R.S., requires licensed money transmitters to notify the Board within 10 days of any increase in the number of locations at which it operates.

For the most part, licensed money transmitters who have increased the number of locations in Colorado have not complied with the 10-day requirement. Instead, licensed money transmitters typically inform the Division of the increase in locations in their quarterly reports.

Expanding the timeframe for licensed money transmitters to notify the Board if they have increased the number of locations does not compromise consumer protection. Rather, it is more of an administrative function to assist in keeping the Board abreast of the number of locations each licensed money transmitter operates.

Further, expanding the amount of time a licensed money transmitter has to inform the Board of a change in the number of locations reduces the regulatory burden on businesses.

As a result, the General Assembly should extend the amount of time licensed money transmitters have to notify the Board of any increase in locations at which they conduct business from 10 days to quarterly.

Recommendation 4 – Amend the Act to include language from Section 603 of the Uniform Money Services Act related to licensed money transmitters’ financial solvency, safety and soundness as well as changes in executive officers, including the qualifications of the officers.

The Uniform Money Services Act (UMSA) was approved by the National Conference of Commissioners on Uniform State Laws as a worthwhile uniform state law to assist in the regulation of money service businesses.⁷¹ The UMSA, among other things, addresses regulatory oversight issues where entities in the money service business (e.g., licensed money transmitters) are required to notify the governing body (e.g., a board) when or if changes within the businesses occur.

For example, Section 603 of the UMSA provides model regulatory language for when a money service business is required to notify the governing body, within 15 days, of any changes that occur which may affect the operations of the business.

The Act does not contain the information highlighted in Section 603 of the UMSA, which addresses the following:⁷²

- Change in executive officer, director, or other person(s) who is responsible for the management, control or operations of the licensed money transmitter;
- Filing of a petition by or against the licensed money transmitter under the United States Bankruptcy Code for bankruptcy or reorganization;
- Filing of a petition by or against the licensed money transmitter for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;
- Commencement of a proceeding to revoke or suspend its license in a state or country in which the licensed money transmitter engages in business; or
- A conviction of an agent of a felony.

⁷¹ US legal.com. *Uniform Money Services Act Law & Legal Definition*. Retrieved May 25, 2012, from <http://definitions.uslegal.com/u/uniform-money-services-act/>

⁷² National Conference of Commissioners on Uniform State Laws. *Uniform Money Services Act*. Retrieved May 25, 2012, from <http://ssl.csg.org/terrorism/umsa2001final.pdf>

It is important to note that the Board has not experienced systemic issues from licensed money transmitters related to informing the Board of the changes highlighted above. Rather, including the aforementioned information in the Act will serve to enhance consumer protection by allowing the Board to proactively monitor any substantive changes to a licensed money transmitter in Colorado.

As such, the General Assembly should adopt Section 603 of the UMSA, which will provide enhanced oversight of licensed money transmitters in the event of substantive changes in the business or financial operations of a Colorado licensed money transmitter.

Recommendation 5 – Amend the Act to include language from Section 604 of the UMSA, which includes procedures for change of control of money a transmitter’s business.

Section 604 of the UMSA outlines specific requirements for money service businesses if or when a change of control of the business occurs. For example, Section 604 requires all persons who wish to acquire a controlling interest in a license to obtain approval from the Board prior to actually obtaining control.⁷³

Adopting Section 604 of the UMSA will serve to update the Act and clearly delineate the procedures when a change of control of a licensed money transmitter occurs.

As a result, the General Assembly should amend the Act to include language in the UMSA related to the requirements for money service businesses (licensed money transmitters) to inform the Board when a change of control occurs.

Recommendation 6 – Add language to the Act requiring licensed money transmitters who deposit securities in lieu of the surety bond to utilize securities that are rated in one of the three highest grades as defined by a nationally recognized organization that rates securities.

In lieu of the surety bond, licensed money transmitters may deposit securities with the Board if the securities have a total value equal to the amount of the required surety bond.⁷⁴ The current surety bond requirement is between \$250,000 and \$2 million.

⁷³ National Conference of Commissioners on Uniform State Laws. *Uniform Money Services Act*. Retrieved May 25, 2012, from <http://ssl.csg.org/terrorism/umsa2001final.pdf>

⁷⁴ § 12-52-107(2), C.R.S.

However, the Act does not specify the quality of the securities deposited with the Board. Although there have not been any issues associated with licensed money transmitters depositing low quality securities in lieu of the surety bond, on a practical note, and to ensure that consumers are protected, the securities must be of the highest quality. For example, if a licensed money transmitter experiences an unexpected and drastic decline in its financial stability and ability to operate as a money transmitter, high quality securities could ensure that consumers are compensated financially if the company is unable to continue to operate.

As such, the General Assembly should amend section 12-52-107(2), C.R.S., to include language requiring securities that are utilized in lieu of the surety bond to be rated in one of the highest grades as defined by a nationally recognized organization that rates securities.

Recommendation 7 – Amend section 12-52-107(2), C.R.S., to require a written release by the Commissioner prior to licensed money transmitters exchanging securities for other securities.

Currently, the Act, in section 12-52-107(2), C.R.S., authorizes licensed money transmitters to deposit securities with the Board, which are held by banks or trust companies, in lieu of the required surety bond. However, the Act does not require licensed money transmitters who choose to have securities in lieu of a surety bond to notify the Division if, or when, they exchange their securities for other securities, which could compromise consumer protection.

In order to effectively monitor the type and quality of securities licensed money transmitters possess, they should be required to report exchanges in securities to the Division.

The Division has experienced instances in the past where licensed money transmitters have exchanged their current securities with new securities without informing the Division. This presents a potential consumer protection issue because the licensed money transmitter may replace existing securities with securities that are inadequate or too risky.

To mitigate potential issues and enhance consumer protection, licensed money transmitters that exchange their securities should be required to obtain written approval from the Commissioner of Banking (Commissioner) that the exchanged securities are acceptable.

As such, the General Assembly should amend section 12-52-107(2), C.R.S., to notify and obtain a written release by the Commissioner when securities are exchanged for existing securities by licensed money transmitters.

Recommendation 8 – Amend section 12-52-108, C.R.S., to require money transmitters that apply to the Board for a license to pay for an on-site investigation.

Section 12-52-108, C.R.S., authorizes the Commissioner to investigate money transmitters prior to granting a license to operate in Colorado. Investigations typically entail visiting a potential licensee's location and reviewing areas of business such as the financial condition of the applicant, and systems for monitoring transactions.

The Act, however, does not provide a mechanism for the Commissioner to charge an applicant for an on-site investigation to ensure that the regulatory requirements are met prior to the Board issuing a license. Instead, the cost is incurred by the Division.

The total cost for an on-site investigation of an applicant varies depending on issues such as, length of time of the investigation, complexity of the investigation and the physical location where the applicant is domiciled (e.g., New York). Generally, however, an on-site investigation for an applicant costs the Division between \$750 and \$1,500.

Depending on the length, complexity and location of the on-site investigation of an applicant, the Commissioner could incur significant costs associated with these types of investigations. Currently, the Commissioner does not have the authority to recoup these costs from applicants; instead, the Commissioner pays for these costs.

Applicants for licensure as a money transmitter in Colorado should be required to pay for the costs associated with an on-site investigation. Doing so enables the Commissioner to recoup the costs associated with pre-licensure on-site investigations.

As such, the General Assembly should amend section 12-52-108, C.R.S., to require applicants for money transmitter licenses to pay for on-site investigations, which occur prior to the Board granting a license to operate in Colorado.

Recommendation 9 – Amend section 12-52-108(1), C.R.S., to expand the time the Board requires an applicant to post the required surety bond, pay the licensing fee and issue a license from 90 days to a maximum of six months, unless the applicant has commenced business in Colorado.

Section 12-52-108(1), C.R.S., states that once the Board approves an applicant's licensing application, the licensee must, within 90 days, post a surety bond and pay the licensing fee. Once the applicant complies with these requirements, the Board will issue a license, and the licensee is authorized to operate as a licensed money transmitter in Colorado.

Oftentimes, an applicant for licensure as a money transmitter applies to operate in a variety of states. According to Division staff, there have been issues in the past where an applicant was approved for a license in Colorado, but was waiting for several additional states to approve his or her licensing application. The license approval process in other states was substantially longer than Colorado's licensing process.

As a result, the applicant was not approved for a license within the 90-day requirement in Colorado. Once the 90-day requirement passes and the applicant does not obtain the surety bond and pay the applicable licensing fee, the applicant is required to re-apply for licensure.

In order to address the issue of applying for multiple licenses in several states, the General Assembly should expand the 90-day requirement in Colorado to six months. Doing so provides adequate time for an applicant to obtain approval from a variety of states, secure the required surety bond and pay the applicable licensing fee. Implementation of this recommendation provides a more flexible regulatory requirement for applicants, while not compromising consumer protections.

Recommendation 10 – Amend section 12-52-108(3), C.R.S., to authorize applicants who have been denied a license by the Board to appeal the denial.

Currently, section 12-52-108(3), C.R.S., states that no licensing application will be denied unless the applicant has had notice of a hearing and the opportunity to be heard thereon. Otherwise stated, the Board must provide notice and hearing on all applications it determines are not in compliance with applicable requirements for any reason.

There are instances where applicants have not completed the proper, and required, information in order to obtain a license from the Board. Under the current language highlighted above, the Board cannot deny a license unless the applicant has had a hearing before the Board.

In the circumstances of initial licensing for money transmitters, the show cause model for hearings, reflected in Section 108(3), is unnecessary and inefficient. Many of the disqualifying factors under the statute are matters of objective fact, such as a prior felony conviction or an outstanding permanent injunction for securities fraud.⁷⁵ In the case of an application presenting these circumstances, the requirement for a hearing is clearly unnecessary and costly, given that the Board is prohibited from issuing a license to the applicant. Also, given that an applicant for an initial license has no vested property interest, such as would be the case in a revocation or suspension proceeding, there would appear to be no policy reason to require a pre-denial hearing in every instance.

⁷⁵ See § 12-52-108(4), C.R.S.

The availability of recourse to appeal of the denial of an application through a hearing is a fundamental component of due process.

However, in order to provide greater efficiency in the licensing process, section 12-52-108(3), C.R.S., should be amended to enable an applicant to request a hearing if he or she wishes to appeal the denial of the licensing application. Applicants who wish to have a hearing to discuss the denial of their licensing application should have the opportunity to do so under provisions of the Act. The Act should not mandate that a hearing take place prior to the denial of any licensing application, regardless of whether the application contains the required safeguards to ensure consumer protection.

The current process in the Act related to license denial is inefficient and unnecessary, and should be amended by the General Assembly to require that the Board give written notice of the denial of any application, including the grounds for the action, and provide an opportunity for the applicant to request a hearing if it believes the denial is in error.