

THE THIRTY-SIXTH LEGISLATURE OF AMERICAN SAMOA

First Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the fourteenth day of January
two thousand and nineteen

AN ACT CREATING A “MONEY SERVICES BUSINESS REGULATORY ACT”;
CREATING A CHAPTER 13 IN TITLE 28 A.S.C.A.

Preamble:

WHEREAS, money services businesses play an increasing role in providing financial services to the unbanked and self-banked in communities across the United States; and

WHEREAS, 49 states regulate money services businesses, however they operate in the territory without any regulatory oversight; and

WHEREAS, due to the large amount of monies handled by these types of businesses regulatory oversight is needed to ensure monies are not handled fraudulently; and

WHEREAS, proper regulation is needed to enable money services businesses to open accounts with local financial institutions when in full compliance with local and federal law; and

WHEREAS, in order to help the government perform its vital services this bill requires money transmitters to collect a transfer fee on every money transmission transaction.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. There is created a Chapter 13 in Title 28 A.S.C.A. which reads:

“TITLE 28

FINANCE AND FINANCIAL INSTITUTIONS

Chapters:

- 01 Development Bank of American Samoa**
- 02 Territorial Bank of American Samoa**
- 08 (Reserved)**

09	U.S. Loan Agreements
10	Banks
11	Savings and Loan Institutions
12	Office of Financial Institutions
13	<u>Money Services Businesses</u>
14	A.S.G. Credit Facility Agreements
15	Loans
16	Escheat of unclaimed Bank deposits

**“CHAPTER 13
MONEY SERVICES BUSINESSES**

Sections:

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28.1301 Purpose.

The purpose of this chapter is to establish policies and procedures to implement and provide uniform enforcement of money services businesses; to require, administer, comply and enforce all financial licenses issuable under this chapter; and to establish administrative and appeal procedures.

28.1302 Authority.

The authority to administer this statute is given to the Commissioner of the Office of Financial Institutions or their designee.

28.1303 Definitions.

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

(b) "Authorized agent" means a person designated by the licensee under this chapter to engage in the money service business on behalf of a licensee.

(c) "Commissioner" means the Commissioner of Office of Financial Institutions or their designee.

(d) "Foreign currency exchanger" means the business of receiving and/or selling foreign currency notes.

(e) "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.

(f) "Licensee" means any person or business entity licensed pursuant to this statute to engage in the money service business.

(g) "Money transmission" means 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.

(h) "Money transmitter" means any person engaging in the business of money transmission.

(i) "Money services business" includes each agent, agency, branch, or office within the Territory of American Samoa of any person doing business, whether or not on a regular basis or as an organized business concern, as a money transmitter, a foreign currency exchanger or in one or more of the capacities otherwise identified by the Commissioner through regulation. The term "money services business" shall not include a "bank" as that term is defined in Title 31, Code of Federal Regulations, Chapter X, nor shall it include a person registered with and regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(j) "Treasurer" means the Treasurer of the American Samoa Government.

(k) "Treasury" means the Department of Treasury.

28.1304 Money services business license.

(a) No person shall engage in the money services business without first obtaining a license from the Office of Financial Institutions. The applicant must also obtain a general business license after the issuance of a money services business license.

(b) Authorized agents operate under a licensee and are not required to obtain a license.

(c) Provisions of this chapter and regulations promulgated under this chapter shall not apply to bank licensed to do business in the territory.

28.1305 Money services business license application.

(a) The application for a license shall be in writing and shall contain the following information:

(1) exact name of 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;

(2) the address from which the business is to take place and telephone number and if the applicant is a business entity, the names and addresses of the directors, officers, and any key shareholder;

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

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

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

(6) the name and address of every authorized agent of the applicant; and

(7) any other information which the Commissioner may require.

28.1306 Denial of money services business license.

(a) The Commissioner may deny an application for a license under this chapter if:

(1) granting of the license will be against the public interest;

(2) applicant has been convicted of, or pled guilty or no contest to, a felony:

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

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

(i) fraud;

(ii) dishonesty;

(iii) breach of trust; or

(iv) money laundering;

(3) the applicant does not intend to actively and in good faith carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;

(4) the applicant, and if a business entity, a key shareholder, director or officer thereof, is not of good business reputation or is lacking in integrity; or

(5) the applicant has knowingly or willfully made a misstatement in an application to the Commissioner for a license, or any document filed in support of such application, or any other person acting on behalf of the applicant has made a false statement.

28.1307 Issuance of money services business license.

(a) Upon the filing of a complete application, the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant.

(b) The Commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this territory if the Commissioner finds that:

- (1) applicant paid all required fees;
- (2) applicant has fulfilled the requirements imposed by this chapter; and
- (3) applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community.

(c) A licensee shall conduct its business at its designated office location. The license is location specific. A licensee is prohibited and restricted from conducting or performing transactions or the collection of funds outside the premises of its designated business office location.

28.1308 Expiration and renewal of money services business license.

- (a) The license is not transferrable or assignable.
- (b) License shall expire one year following the date of issuance.
- (c) The licensee shall include in its renewal application:
 - (1) notification of any litigation involving money transmission;
 - (2) a copy of the licensee's most recent annual financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position; financial statements must be certified to be true and correct by licensee and supported by a tax return; if financial statements are insufficient or unreliable, Commissioner reserves right to request other financial statements, including audited statements, as needed; and
- (d) any other information which Commissioner may require in order to renew a license must be submitted.
- (e) Failure to comply shall be just cause for the non-renewal of licensee's license and may be subjected to other sections of this chapter.

28.1309 Registration of authorized agents.

(a) A licensee desiring to conduct licensed activities through authorized agents shall authorize each 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 territory and federal law;

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

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

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

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

(b) Every authorized agent of a licensee shall register with the Commissioner by:

(1) paying a registration fee of \$100; and

(2) submitting a copy of their authorized agent contract with licensee in compliance with subsection (a).

(c) If an authorized agent is a nonresident worker, they must obtain approval from Immigration and/or other proper authorities. The agent must submit copies of their immigration permit or other evidence proving lawful residence.

(d) Registration of authorized agents shall be denied if applicant fails to meet the requirements of this section or any other applicable requirement in this chapter or one promulgated by rule.

28.1310 Examination.

(a) Commissioner may at any time and from time to time examine the business of any licensee or its authorized agents in order to ascertain whether such business is being conducted in a lawful manner including compliance with federal anti-money laundering laws and whether all monies received for transmission are properly accounted for. Each licensee and its authorized agents shall keep books, records and accounts in such form or manner as the Commissioner may prescribe.

(b) In conducting an examination, the Commissioner:

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

(2) 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.

28.1311 Reporting requirements.

(a) Quarterly reports to the Commissioner are required along with any accumulated fees or assessments. Forms along with instructions will be provided.

(b) Licensees shall submit quarterly:

(1) a report of total funds transmitted outside of the territory, and report the number of individuals transmitting.

(2) a report of the total amount of foreign currency transacted in the territory.

(3) money transmission fees as found in A.S.C.A. 28.1321.

(4) any other report that the Commissioner may require by administrative rule.

(c) Commissioner may require money transmitters to obtain details of senders of amounts aggregating \$10,000 or more, such details include social security numbers, tax identification.

(d) Within 15 days of occurrence of an event listed in this subsection (d), 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:

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

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

(3) any other event that the Commissioner may require by administrative rule.

(e) Federal reporting requirements:

(1) A licensee and an authorized agent shall comply with federal currency reporting record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. 5311, 31 C.F.R. Chapter X and any other federal laws pertaining to money laundering. The timely filing of any required reports with the appropriate federal agency is compliance with the requirements of this section.

(f) A penalty fee of \$100 a day shall be assessed on a money service business each day a required report is late. This fee may be waived at the discretion of the Commissioner.

28.1312 Confidentiality of information.

(a) Information obtained by the Commissioner under this chapter is confidential.

(b) Subsection (a) 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 and their activities.

28.1313 Maintenance of forms.

(a) Each licensee shall obtain and continue to hold for three years a true copy of every receipt form used by it and by its authorized agents for selling foreign currency notes or for money received for transmission.

(b) A receipt used for the sale of foreign currency notes shall contain not less than the following information:

(1) The amount and country of origin of the foreign currency notes involved in the transactions.

(2) The rate of exchange of the transaction.

(3) The U.S. dollar amount involved in the transaction.

(4) The commission or other charge received by the licensee for carrying out the transaction.

(c) A receipt used for the transmittal of money shall contain in addition to the above information required for the sale of foreign currency notes, the name and address of the beneficiary and the method in which the beneficiary is to receive the funds transmitted.

(d) Every licensee violating the requirement of this section shall be subject to a fine of \$100 for each violation.

28.1314 Forwarding of funds.

Every licensee or its authorized agents shall forward all monies received for transmission or give instructions committing equivalent funds to the person designated by the depositor within 7 days after receiving such money, unless otherwise ordered by his customer. Customers must be provided written disclosure highlighting fees, reporting, cancellation, and compliance prior to each transaction.

28.1315 Security deposit.

(a) As security for the faithful performance of its obligations, each licensee, before engaging in money transmission, shall provide security in the form of a deposit of \$10,000 with the Commissioner; and such value must be maintained at all times.

(b) A separate security deposit is required for each license that is issued.

(c) The following procedures shall apply to security deposits:

(1) Interest earned on such deposit shall accrue to the benefit of the money service business.

(2) Complete the appropriate forms as provided by the Commissioner.

(3) Release of the security deposit shall only be accomplished by authority from the Commissioner.

(d) A security deposit is not required of money services businesses who do not offer money transmission services.

(e) Commissioner shall forward the deposit to the Treasurer for custody and safekeeping and it shall be accomplished by preparing a transmittal form that is acknowledged by the Treasurer.

28.1316 Trust fund.

The money deposited with the Treasurer in A.S.C.A. 28.1316 shall constitute a fund for the benefit of persons in case a licensee or its authorized agents is not able to pay for funds entrusted to them for money transfer.

28.1317 Order to cease unlawful practice.

If, in the judgment of the Commissioner, a licensee is violating or failing to comply with this chapter; the Commissioner shall direct the licensee to comply or face sanctions and penalties if it engages in an unsafe or injurious manner. The Commissioner shall direct the licensee to discontinue this practice via a Cease and Desist Order. The order shall require the licensee to show cause before the Director

at the time and place to be fixed by him why the order should not be observed. If the Cease and Desist Order is not followed, Commissioner may remedy the situation by any action found in A.S.C.A. 28.1319.

28.1318 Suspension or revocation of license.

- (a) Commissioner may suspend any license issued if:
- (1) the licensee has violated a provision of this statute or any rule issued;
 - (2) any fact or condition exists which, if it had existed at the time of the original application of such license, would be grounds for denial; or
 - (3) the licensee is conducting his business in an unsound manner.

28.1319 Criminal and civil penalties.

(a) Any person who violates this chapter or who files materially false information with a license application or renewal under this chapter is guilty of a class B misdemeanor.

(b) Subject to Title 4, Chapter 10, Administration Procedures Act, if the Commissioner determines that a person is engaging in the money services business in violation of this chapter the Commissioner may:

- (1) suspend, revoke, or not renew that person's license under this chapter;
- (2) issue a cease and desist order from committing any further violation;
- (3) prohibit the person from continuing to engage in the business of money transmission;
- (4) impose an administrative fine not to exceed \$1000 per violation; or
- (5) any combinations of actions under this subsection (b).

(c) Before a license is suspended or revoked Commissioner shall hold an order to show cause hearing.

(d) In cases involving extraordinary circumstances requiring immediate action, the Commissioner, after meeting with the Treasurer, or his/her designee and the Director of the Department of Commerce, or his/her designee, and arriving at an unanimous decision, may take any enforcement action authorized by this chapter. The accused person 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.

28.1320 Fees.

The following is a schedule of fees required by this chapter:

- | | |
|--|----------------------|
| (1) Money Service Business License | \$1,000/per location |
| (2) Money Service Business License Renewal | \$1,000/per location |
| (3) Authorized Agent License | \$100 |
| (4) Authorized Agent License Renewal | \$100 |

28.1321 Money transmission fee.

- (a) Money Transmitters shall collect transaction fees as follows:

- (1) \$5 for each transaction not in excess of \$500; and
- (2) for amounts in excess of \$500:
 - (i) a \$5 base fee; and
 - (ii) 1% of the amount in excess of \$500.

(b) These fees shall be submitted with the quarterly reports required in A.S.C.A. 28.1311.

(c) 50% of fees collected shall be deposited to an enterprise fund earmarked for the operation of the Office of Financial Institutions and the remainder shall be deposited in the general fund.

28.1322 Forms.

Commissioner may provide forms and require that such forms be used in order to comply with this chapter.

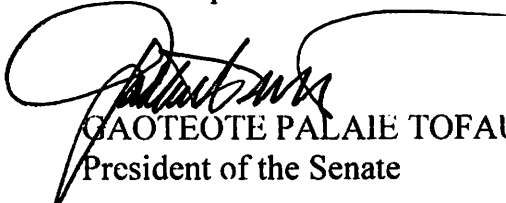
28.1323 Rulemaking.

(a) The Commissioner may make a rule authorized by this chapter in accordance with the Administrative Procedure Act including to:

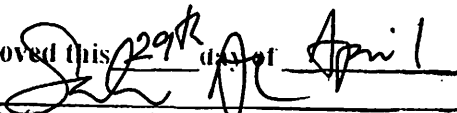
- (1) restrict or prohibit practices that are misleading, unfair, or abusive;
- (2) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between a customer and a money service business; and
- (3) any other rule needed for the proper enforcement of this chapter.”

Sec 2. Effective date.

This Act shall become effective 6 months after the end of the session at which it has been passed.


GAOTEOTE PALAIE TOFAU
President of the Senate


SAVALI TALAVOU ALE
Speaker, House of Representatives

Hereby Approved this 29th day of April 2019

Acting Governor Of American Samoa