§ 643. Bond or securities. 1. As a condition for the issuance and retention of the license, applicants for a license and other licensees shall, within thirty days after notice by the superintendent, or such longer or shorter period as he or she shall prescribe, file with the superintendent one or more corporate surety bond or bonds, as required below, in form satisfactory to him or her and issued by a bonding company or insurance company authorized to do business in this state. One bond shall be in favor of the superintendent and in such principal amount as he or she shall determine is necessary or desirable for the protection of the purchasers and holders of New York instruments sold or to be sold by the applicant or licensee, provided, however, that until June first, nineteen hundred seventy-seven, the principal amount of such bond shall be no less than two hundred ten thousand dollars and on and after June first, nineteen hundred seventy-seven, the principal amount of such bond shall be no less than five hundred thousand dollars. If the applicant or licensee intends to engage or engages in the sale of New York traveler's checks, such applicant or licensee shall file with the superintendent a separate bond. Said bond shall be in favor of the superintendent and in such principal amount as he or she shall determine is necessary or desirable for the protection of the purchasers and holders of the New York traveler's checks sold or to be sold by the applicant or licensee; provided, however, that the principal amount of such bond shall not be less than seven hundred fifty thousand dollars, unless the superintendent, for good cause shown, shall have determined that a lesser amount will adequately protect the purchasers and holders of the New York traveler's checks sold or to be sold by such applicant or licensee.

In making any determination under this subdivision, the superintendent may take into account the financial condition of the licensee, the number of locations in this state at which the licensee, either directly or through agents, transacts the business of selling New York instruments or New York traveler's checks, the controls imposed on such agents or, and the possible exposure of purchasers and holders of New York instruments and New York traveler's checks to loss in the event of the insolvency, bankruptcy or other financial impairment of the licensee. The proceeds of each bond shall constitute a trust fund for

the exclusive benefit of the purchasers and holders of the New York instruments and New York traveler's checks, as the case may be. Except as otherwise provided in the following sentence, in the event of the insolvency or bankruptcy of any licensee, the proceeds of the bond or bonds held for the exclusive benefit of the purchasers and holders of New York instruments and the proceeds of the bond or bonds held for the exclusive benefit of the purchasers and holders of New York traveler's checks shall be paid to the superintendent forthwith for disposition in accordance with the provisions of this article. If any New York instruments have been assigned to the fund, the proceeds of the bond held for the exclusive benefit of the purchasers and holders of New York instruments shall constitute a trust fund for the benefit of, and shall be payable to, the fund to the extent of such assignment. From time to time, the superintendent may require, upon thirty days notice or such longer or shorter period as he or she shall prescribe, that such bond or bonds be increased if he or she shall determine that such increase is necessary or desirable for the protection of the purchasers and holders of New York instruments and New York traveler's checks.

2. The licensee shall give notice to the superintendent by registered or certified mail of any action which shall be brought against him and of any judgment which shall be entered against him by such purchaser or holder of a New York instrument or a New York traveler's check, with details sufficient to identify the action or judgment, within ten days after the commencement of any such action or notice to the licensee of entry of any such judgment. The corporate surety shall within ten days after it pays any claim or judgment to any such purchaser or holder of a New York instrument or a New York traveler's check give notice to the superintendent by registered mail of such payment, with details sufficient to identify the purchaser or holder and the claim or judgment so paid. Whenever the principal sum of such bond or bonds is reduced by one or more recoveries or payments thereon the licensee shall furnish a new or additional bond or bonds under the provisions of this section, so that the total or aggregate principal sum of such bond or bonds shall equal the sum required pursuant to the provisions of this section, or shall furnish an endorsement duly executed by the corporate surety reinstating the bond or bonds to the required principal sum thereof. The

liability of the surety on such bond or bonds to the superintendent and to the said purchasers and holders of New York instruments and New York traveler's checks shall not be affected in any way by any misrepresentation, breach of warranty or failure to pay the premium or by any act or omission upon the part of the licensee nor by the insolvency or bankruptcy of the licensee or the insolvency of the licensee's estate, and in the event of the death or dissolution or liquidation of the licensee, shall continue upon all transactions entered into by the agents of such deceased, dissolved or liquidated licensee within a period of thirty days after the death, dissolution or liquidation of the licensee or termination of the bond or bonds, whichever date shall first occur, provided, however, that such transactions were entered into in good faith by such purchasers and holders of New York instruments and New York traveler's checks. Every such corporate surety bond shall provide that in the event that a judgment recovered against the licensee or its legal representative or successor by any such purchaser or holder on a claim arising or a transaction entered into during the life of the bond shall remain unsatisfied after the expiration of thirty days from the service of notice of entry of judgment upon the licensee or upon his legal representative or successor or upon the attorney for the licensee, and upon the corporate surety, or in the event that the fund has become an assignee of any claim arising or a transaction entered into during the life of the bond, then an action may be maintained against the corporate surety under the terms of the bond (1) by such purchaser or holder for the amount of such judgment not exceeding the amount of the bond, except during a stay of execution of such judgment against the licensee or his legal representatives or successors, or (2) by the superintendent, on behalf of the fund, for the amount of such claim, not exceeding the amount of the bond. The bond may not be cancelled either by the licensee or the surety except upon notice to the superintendent by registered or certified mail with return receipt requested, the cancellation to be effective not less than ten days after receipt by the superintendent of such notice.

3. In lieu of such corporate surety bond or bonds, or of any portion of the principal sum thereof as required by this section, applicants for

a license and other licensees may keep on deposit, or may be required to keep on deposit by the superintendent, with such banks, trust companies, national banks, savings bank, savings and loan associations, federal savings associations, credit unions, or federal credit unions in the state of New York as such applicants or licensees may designate and the superintendent may approve, and in accordance with such rules and regulations as the superintendent shall from time to time promulgate, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district or instrumentality of this state, or guaranteed by this state, or dollar deposits, to an aggregate amount, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, of not less than the amount of the required corporate surety bond or bonds or portion or portions thereof. Such securities or funds shall be deposited to secure the same obligation or obligations as would the corporate surety bond or bonds filed under this section. So long as it shall continue business in the ordinary course, such licensee shall be permitted to collect interest on the securities so deposited and from time to time to exchange, examine and compare such securities. In the event of the failure or insolvency of such licensee, the securities, any proceeds therefrom and the funds deposited pursuant to this section shall constitute a trust fund for the exclusive benefit of the purchasers and holders of New York instruments or New York traveler's checks, as the case may be, or, in the event such New York instruments are assigned to the fund, the securities, any proceeds therefrom and the funds deposited pursuant to this section for the benefit of the purchasers and holders of New York instruments shall constitute a trust fund, for the benefit of the fund.

4. Notwithstanding the foregoing provisions of this section, if the superintendent shall find that a licensee has transacted the business of money transmission in this state for a period of five consecutive years and that such business has been conducted honestly, efficiently and safely and that the licensee's financial condition is sound and that its New York instruments are insured, the superintendent may dispense with,

modify or eliminate any of the foregoing requirements of this section with respect to New York instruments; provided, however, that if at any time subsequent thereto, the superintendent shall deem it necessary or desirable for the protection of the purchasers and holders of New York instruments, to reinstate any of the requirements of this section, he may do so.