

Hall of the House of Representatives
86th General Assembly - Regular Session, 2007
Amendment Form

Subtitle of House Bill No. 2518

"TO ADOPT THE UNIFORM MONEY SERVICES ACT."

Amendment No. 1 to House Bill No. 2518.

Amend House Bill No. 2518 as originally introduced:

Delete SECTION 1 in its entirety and substitute the following:

“SECTION 1. Arkansas Code Title 23 is amended to add an additional chapter to read as follows:

CHAPTER 55 -- UNIFORM MONEY SERVICES ACT

ARTICLE 1 -- GENERAL PROVISIONS

23-55-101. Short title.

This chapter may be cited as the Uniform Money Services Act.

23-55-102. Definitions.

In this chapter:

(1) “Applicant” means a person that files an application for a license under this Act.

(2) “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee.

(3) “Bank” means an institution organized under federal or state law which:

(A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than \$100,000, and does not engage in the business of making commercial loans.

(4) “Commissioner” means the Securities Commissioner.

(5) “Control” means:

(A) Ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;



(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) "Currency exchange" means receipt of revenues from the exchange of money of one government for money of another government.

(7) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) "Licensee" means a person licensed under this Act.

(9) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(10) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) "Money services" means money transmission, check cashing, or currency exchange.

(12) "Money transmission" means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(13) "Outstanding," with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(14) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(18) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Stored value" means monetary value that is evidenced by an electronic record.

(20) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

23-55-103. Exclusions.

This chapter does not apply to:

- (1) the United States or a department, agency, or instrumentality thereof;
- (2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;
- (3) a state, county, city, or any other governmental agency or governmental subdivision of a State;
- (4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. Section 611-633 (1994 & Supp. V 1999), under the laws of a State or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;
- (5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;
- (6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1-25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;
- (7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;
- (8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;
- (9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers; or
- (10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

ARTICLE 2 -- MONEY TRANSMISSION LICENSES

23-55-201. License required.

(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

- (1) is licensed under this subchapter or approved to engage in money transmission under § 23-55-203;
- (2) is an authorized delegate of a person licensed under this subchapter; or
- (3) is an authorized delegate of a person approved to engage in money transmission under § 23-55-203.

(b) A license under this subchapter is not transferable or assignable.

23-55-202. Application for license.

(a) In this section, "material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(b) A person applying for a license under this subchapter shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the commissioner reasonably requires with respect to the applicant.

(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation

in which any executive officer, manager, director, or person in control of, the applicant has been involved in the 10-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m (1994 & Supp. V 1999);

(9) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m (1994 & Supp. V 1999); or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(11) any other information the commissioner reasonably requires with respect to the applicant.

(d) A nonrefundable application fee of \$1,500 and a license fee of \$750 must accompany an application for a license under this subchapter. The license fee must be refunded if the application is denied.

(e) The commissioner may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

23-55-203. Approval to engage in money transmission when licensed in another state.

(a) A person that is licensed to engage in money transmission in at least one other state, with the approval of the commissioner and in accordance with this section, may engage in money transmission and currency exchange in this state without being licensed pursuant to § 23-55-202 if:

(1) the state in which the person is licensed has enacted the Uniform Money Services Act or the commissioner determines that the money transmission laws of that state are substantially similar to those imposed by the law of this state;

(2) the person submits to, and in the form required by, the commissioner:

(A) in a record, an application for approval to engage in money transmission and currency exchange in this state without being licensed pursuant to § 23-55-202;

(B) a nonrefundable fee of \$1,000; and

(C) a certification of license history in the other state.

(b) When an application for approval under this section is complete,

the commissioner shall promptly notify the applicant, in a record, of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within 120 days after that date; or

(2) if the request is not approved or denied within 120 days after that date:

(A) the request is approved; and

(B) the approval takes effect as of the first business day after expiration of the 120-day period.

(c) A person that engages in money transmission and currency exchange in this state pursuant to this section shall comply with the requirements of, and is subject to the sanctions under, Articles 6, 7, and 8, § 23-55-601 et seq., § 23-55-701 et seq., and § 23-55-801 et seq., as if the person were licensed pursuant to § 23-55-202.

23-55-204. Security.

(a) Except as otherwise provided in subsection (b), a surety bond, letter of credit, or other similar security acceptable to the commissioner in the amount of \$50,000 plus \$10,000 per location, not exceeding a total addition of \$250,000, must accompany an application for a license.

(b) Security must be in a form satisfactory to the commissioner and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the commissioner may maintain an action on behalf of the claimant.

(d) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this State is reduced. The commissioner may permit a licensee to substitute another form of security acceptable to the commissioner for the security effective at the time the licensee ceases to provide money services in this State.

(e) In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the commissioner.

(f) The commissioner may increase the amount of security required to a maximum of \$1,000,000 if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

23-55-205. Issuance of license.

(a) When an application is filed under this subchapter, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this subchapter if

the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with §§ 23-55-202,23-55-203, and 23-55-206; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission;

(b) When an application for an original license under this subchapter is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this subchapter, to take effect as of the first business day after expiration of the 120-day period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied by the commissioner under this subchapter may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing.

23-55-206. Renewal of license.

(a) A licensee under this subchapter shall pay an annual renewal fee of \$750 no later than 30 days before the anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(b) A licensee under this subchapter shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number and monetary amount of payment instruments and stored-value sold by the licensee in this State which have not been included in a renewal report, and the monetary amount of payment instruments and stored value currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in §§ 23-55-701 and 23-55-702;

(5) proof that the licensee continues to maintain adequate security as required by § 23-55-203; and

(6) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in money transmission or

provides other money services.

(c) If a licensee does not file a renewal report or pay its renewal fee by the renewal date or any extension of time granted by the commissioner, the commissioner shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of 10 days after the notice is sent, the licensee's license is suspended 10 days after the commissioner sends the notice of suspension. The suspension must be lifted if, within 20 days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee; and

(2) pays \$100 for each day after suspension that the commissioner did not receive the renewal report and the renewal fee.

(d) The commissioner for good cause may grant an extension of the renewal date.

23-55-207. Net worth.

A licensee under this subchapter shall maintain a net worth of at least \$250,000 determined in accordance with generally accepted accounting principles.

ARTICLE 3 -- [Reserved.]

ARTICLE 4 -- CURRENCY EXCHANGE LICENSES

23-55-401. License required.

(a) A person may not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person:

(1) is licensed under this subchapter;

(2) is licensed for money transmission under Article 2, § 23-55-201 et seq., or approved to engage in money transmission under § 23-55-203;

(3) is an authorized delegate of a person licensed under Article 2, § 23-55-201 et seq.; or

(4) is an authorized delegate of a person approved to engage in money transmission under § 23-55-203.

(b) A license under this subchapter is not transferable or assignable.

23-55-402. Application for license.

(a) A person applying for a license under this subchapter shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange or check cashing, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the commissioner reasonably requires with

respect to the applicant, but not more than the commissioner may require under subchapter 2.

(b) A nonrefundable application fee of \$1,500 and a license fee of \$750 must accompany an application for a license under this subchapter. The license fee must be refunded if the application is denied.

23-55-403. Issuance of license.

(a) When an application under this subchapter, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this subchapter if the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with § 23-55-402; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(b) When an application for an original license under this subchapter is complete, the commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the commissioner shall issue the license under this subchapter, to take effect as of the first business day after expiration of the period.

(c) The commissioner may for good cause extend the application period.

(d) An applicant whose application is denied a license by the commissioner under this subchapter may appeal, within 30 days after receipt of the notice of the denial, from the denial and request a hearing.

23-55-404. Renewal of License.

(a) A licensee under this subchapter shall pay a biennial renewal fee of \$750 no later than 30 days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(b) A licensee under this subchapter shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the commissioner on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange or check cashing, including limited stations and mobile locations.

(c) If a licensee does not file a renewal report and pay its renewal

fee by the renewal date or any extension of time granted by the commissioner, the commissioner shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of 10 days after the notice is sent, the licensee's license is suspended 10 days after the commissioner sends the notice of suspension.

(d) The commissioner for good cause may grant an extension of the renewal date.

ARTICLE 5--AUTHORIZED DELEGATES

23-55-501. Relationship between licensee and authorized delegate.

(a) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this chapter.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) If a license is suspended or revoked or a licensee does not renew its license, the commissioner shall notify all authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under subchapter 2 or 4. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

(f) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

23-55-502. Unauthorized activities.

A person may not provide money services on behalf of a person not licensed under this chapter. A person that engages in that activity provides money services to the same extent as if the person were a licensee.

ARTICLE 6--EXAMINATIONS – REPORTS – RECORDS

23-55-601. Authority to conduct examinations.

(a) The commissioner may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee.

(b) The commissioner may examine a licensee or its authorized delegate, at any time, without notice, if the commissioner has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued under this chapter.

(c) If the commissioner concludes that an on-site examination is necessary under subsection (a), the licensee shall pay the reasonable cost of the examination.

(d) Information obtained during an examination under this chapter may be disclosed only as provided in § 23-55-607.

23-55-602. Cooperation.

The commissioner may consult and cooperate with other state money services regulators in enforcing and administering this act. They may jointly pursue examinations and take other official action that they are otherwise empowered to take.

23-55-603. Reports.

(a) A licensee shall file with the commissioner within 15 business days any material changes in information provided in a licensee's application as prescribed by the commissioner.

(b) A licensee shall file with the commissioner within 45 days after the end of each fiscal quarter a current list of all authorized delegates, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A licensee shall file a report with the commissioner within one business day after the licensee has reason to know of the occurrence any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110 (1994 & Supp. V. 1999), for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a State or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director, or person in control, of the licensee for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

23-55-604. Change of control.

(a) A licensee shall:

(1) give the commissioner notice in a record of a proposed change of control within 15 days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of \$1,000 with the notice.

(b) After review of a request for approval under subsection (a), the commissioner may require the licensee to provide additional information

concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(d) When an application for a change of control under this subchapter is complete, the commissioner shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within 120 days after that date; or

(2) if the request is not approved or denied within 120 days after that date:

(A) the request is deemed approved; and

(B) the commissioner shall permit the change of control under this section, to take effect as of the first business day after expiration of the period.

(e) The commissioner, by rule of order, may exempt a person from any of the requirements of subsection (a)(2) and (3) if it is in the public interest to do so.

(f) Subsection (a) does not apply to a public offering of securities.

(g) Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (c).

23-55-605. Records.

(a) A licensee shall maintain the following records for determining its compliance with this Act for at least three years:

(1) a record of each payment instrument or stored-value obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value obligations;

(5) records of each payment instrument and stored-value obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the commissioner reasonably requires by rule.

(b) The items specified in subsection (a) may be maintained in any form of record.

(c) Records may be maintained outside this State if they are made accessible to the commissioner on seven business-days' notice that is sent in a record.

(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the commissioner pursuant to § 23-55-601.

23-55-606. Money laundering reports.

(a) A licensee and an authorized delegate shall file with the commissioner all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section 103 (2000) and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the requirements of subsection (a), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the commissioner.

23-55-607. Confidentiality.

(a) Except as otherwise provided in subsection (b), all information or reports obtained by the commissioner from an applicant, licensee, or authorized delegate and all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The commissioner may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the commissioner finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the commissioner of its intent to release the information.

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

ARTICLE 7--PERMISSIBLE INVESTMENTS

23-55-701. Maintenance of permissible investments.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than he aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold in all states and money transmitted from all states by the licensee.

(b) The commissioner, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner

determines to have a safety substantially equivalent to other permissible investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee.

23-55-702. Types of permissible investments.

(a) Except to the extent otherwise limited by the commissioner pursuant to Section 701, the following investments are permissible under § 23-55-701:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813 (1994 & Supp. V. 1999);

(2) banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940, 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to investments specified in paragraphs (1) through (4).

(b) The following investments are permissible under § 23-55-701, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940, 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and whose

portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the commissioner designates, to the extent specified by the commissioner.

(c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with § 23-55-701.

ARTICLE 8--ENFORCEMENT

23-55-801. Suspension and revocation.

(a) The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this chapter or a rule adopted or an order issued under this Act;

(2) the licensee does not cooperate with an examination or investigation by the commissioner;

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter.

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this Act, and the previous conduct of the person involved.

23-55-802. Suspension and revocation of authorized delegates.

(a) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:

(1) the authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;

(2) the authorized delegate did not cooperate with an examination or investigation by the commissioner;

(3) the authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

23-55-803. Orders to cease and desist.

(a) If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(b) The commissioner may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the commissioner.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to § 23-55-801 or § 23-55-802.

23-55-804. Consent orders.

The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been

violated.

23-55-805. Civil penalties.

The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed \$1,000 per day for each day the violation is outstanding, plus this State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

23-55-806. Criminal penalties.

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter, that intentionally makes a false entry or omits a material entry in such a record, or violates any rule promulgated or order issued hereunder is guilty of a Class B felony.

(b) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives more than \$500 in compensation within a 30-day period from this activity is guilty of a Class B felony.

(c) A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter and who receives no more than \$500 in compensation within a 30-day period from this activity is guilty of a Class A misdemeanor.

23-55-807. Unlicensed persons.

(a) If the commissioner has reason to believe that a person has violated or is violating § 23-55-201 or § 23-55-401 the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of § 23-55-201 or § 23-55-401.

(b) In an emergency, the commissioner may petition the Pulaski County Circuit Court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

(c) An order to cease and desist becomes effective upon service of it upon the person.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to §§ 23-55-901 and 23-55-902.

23-55-808. Receivership.

(a)(1) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner, or the Attorney General representing the commissioner, may apply to the Pulaski County Circuit Court or to the circuit court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in such amount as may appear necessary to protect claimants of the licensee.

(2) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or such other action as may be necessary to conserve the assets of

the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise such powers and duties as may be necessary and consistent with the laws of this state applicable to the appointment of receivers.

(3) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

ARTICLE 9--ADMINISTRATIVE PROCEDURES

23-55-901. Administrative proceedings.

All administrative proceedings under this chapter must be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-55-902. Hearings.

Except as otherwise provided in §§ 23-55-205(c), 23-55-404(c), 23-55-803, and 23-55-807, the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The commissioner shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

ARTICLE 10--MISCELLANEOUS PROVISIONS

23-55-1001. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

23-55-1002. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

23-55-1003. Effective date.

This chapter takes effect January 1, 2008.

23-55-1004. [Reserved.]

23-55-1005. Savings and transitional provisions.

(a) A license issued under the Sale of Checks Act, § 23-41-101 et seq., that is in effect immediately before January 1, 2008 remains in force as a license under the Sale of Checks Act, § 23-41-101 et seq., until the license's expiration date. Thereafter, the licensee is deemed to have applied for and had received a license under this chapter and must comply with the renewal requirements set forth in this chapter.

(b) This chapter applies to the provision of money services on or after January 1, 2008. This chapter does not apply to money transmission

provided by a licensee who was licensed to provide money transmission under the Sale of Checks Act, § 23-41-101 et seq., and whose license remains in force under this section.

SECTION 2. Except as provided in § 23-55-1005, effective January 1, 2008, Arkansas Code Title 23, Chapter 41, is repealed.

~~23-41-101. Title.~~

~~This chapter shall be known and may be cited as the "Sale of Checks Act".~~

~~23-41-102. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~(1) "Agent" means "subagents" of the licensee or other representatives who are authorized to act on behalf of the licensee in the sale of checks issued by the licensee, whether or not the subagent or representative was solicited by or deals directly with the licensee;~~

~~(2) "Check" means any check, draft, money order, or other written instrument for the transmission or payment of money or credit, except that it does not mean money or currency of any nation;~~

~~(3) "Commissioner" means the Securities Commissioner;~~

~~(4) "Fiscal year" means a licensee's accounting period as adopted for federal taxation purposes;~~

~~(5) "Issuing" means the act of drawing any instrument of exchange by a person who engages in the business of drawing those instruments as a service or for a fee or other consideration;~~

~~(6) "Licensee" means any person licensed under this chapter;~~

~~(7) "Money order" means a bill of exchange issued at the request, and for the use or benefit, of a person other than the issuer and representing an unconditional order or obligation in writing of the issuer to pay a sum certain in money on demand to order or to bearer;~~

~~(8) "Net worth" means excess of assets over liabilities as determined by generally accepted accounting principles; and~~

~~(9) "Person" means any individual, partnership, joint stock association, trust, unincorporated association, or corporation.~~

~~23-41-103. Exempt transactions.~~

~~(a) This chapter shall not apply to the receipt of money by any incorporated telegraph company at any agency or office of the company for immediate transmission by telegraph.~~

~~(b) This chapter shall not apply to the sale or issuance of checks by:~~

~~(1) The United States or any department or agency of the United States; or~~

~~(2) Banks, credit unions, and savings and loan associations organized under the laws of this state or of the United States and insured by the United States or any agency thereof, and authorized to do business in this state.~~

~~23-41-104. Penalty — Enforcement.~~

~~(a) Any person is guilty of a Class A misdemeanor who purposely:~~

~~(1) Violates any provision of this chapter or any regulation adopted or order issued by the Securities Commissioner pursuant to this chapter with intent to defraud or deceive;~~

~~(2) Makes any false or misleading statement of a material fact in any application, statement, or report filed pursuant to this chapter;~~

~~(3) Omits to state any material fact necessary to provide the commissioner with information lawfully required by him; or~~

~~(4) Obstructs any lawful investigation, examination, entry, or access by the commissioner.~~

~~(b) Each day during which a violation continues constitutes a separate offense.~~

~~(c) The imposition of any fine or term of imprisonment pursuant to subsection (a) of this section:~~

~~(1) Is in addition to any suspension, revocation, or denial of a license which may result from the violation; and~~

~~(2) Is not a bar to enforcement of this chapter by an injunction or other appropriate civil remedy.~~

~~(d) For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated hereunder shall be considered to have been committed in any county:~~

~~(1) In which any act was performed in furtherance of the transaction which violated the chapter;~~

~~(2) In which the principal or an aider or abetter initiated or acted in furtherance of a course of conduct;~~

~~(3) From which any violator gained control or possession of any proceeds of the violation or of any books, records, documents, or other material or objects which were used in furtherance of the violation; or~~

~~(4) From which or into which the violator directed any postal, telephonic, electronic, or other communication in furtherance of the violation.~~

~~(e) The commissioner may refer such evidence as is available concerning violations of this chapter or any rule or order hereunder to any appropriate prosecuting or law enforcement authority.~~

~~(f) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or common law.~~

~~23-41-105. Rules and regulations.~~

~~The Securities Commissioner may make and enforce reasonable rules and regulations which are necessary for the enforcement and execution of this chapter.~~

~~23-41-106. Disposition of fees.~~

~~All license and investigation fees provided for in this chapter shall be retained by the Securities Commissioner during the fiscal year in which collected to pay for the costs of administering this chapter.~~

~~23-41-107. Notice.~~

~~Except as otherwise provided in this chapter, whenever the Securities Commissioner is required to give notice to any applicant or licensee, the notice requirement shall be complied with if, within the time fixed in § 23-41-122, the notice shall be enclosed in an envelope plainly addressed to the applicant or licensee, at the address set forth in the application or license, United States postage fully prepaid and deposited registered or~~

~~certified in the United States mail.~~

~~23-41-108. Discontinuance of business.~~

~~(a) Within five (5) days after a discontinuance of a licensee's business, he shall inform the Securities Commissioner of the discontinuance and shall surrender his license for cancellation.~~

~~(b) If, as a result of any investigation, hearing, report, or examination, the commissioner finds that a licensee is insolvent or is conducting his business in such a manner as to render his further operations hazardous to the public, then the commissioner may, through an order served personally or by certified mail upon the licensee and any person known to the commissioner to possess funds of the licensee or its customers, require the immediate discontinuance of the disbursement of the funds and the cessation of the licensee's business. The order shall remain in effect until it is set aside, in whole or in part, by the commissioner or otherwise modified.~~

~~(c)(1) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner, or the Attorney General representing the commissioner, may apply to the Chancery Court of Pulaski County or to the chancery court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in such amount as may appear necessary to protect claimants of the licensee.~~

~~(2) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or such other action as may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise such powers and duties as may be necessary and consistent with the laws of this state applicable to the appointment of receivers.~~

~~(3) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.~~

~~23-41-109. Judicial review.~~

~~All final administrative decisions of the Securities Commissioner under this chapter shall be subject to judicial review by the Circuit Court of Pulaski County on questions of law and appeal therefrom to the Arkansas Supreme Court.~~

~~23-41-110. License required.~~

~~(a) No person shall engage in the business of selling or issuing checks as a service or for a fee or other consideration without first securing a license to do so from the Securities Commissioner under this chapter.~~

~~(b) A separate license is not required for an agent of a licensee, or an employee of such an agent, who acts on behalf of the licensee in the sale or exchange of checks of which the licensee is the issuer unless the agent directly sells or delivers the licensee's checks over the counter to the public and, in the ordinary course of business, receives or has access to:~~

~~(1) The licensee's checks that are returned after payment through banking channels or otherwise for verification, reconciliation, or accounting with respect thereto; or~~

~~(2) Bank statements relating to checks so returned.~~

~~(c)(1) All money or credits received by an agent of a licensee from the sale or issuance of checks or for the purpose of transmission must be remitted to the licensee or deposited with a bank authorized to do business in this state for credit to an account of the licensee not later than the seventh business day following its receipt.~~

~~(2) However, the requirement of subdivision (c)(1) of this section shall not apply:~~

~~(A) If an agent has placed on deposit with the licensee an amount not less than the average of the aggregate face amount of checks issued by the licensee and sold by the agent per day multiplied by the number of days in excess of seven (7) of the remittance period agreed to in a written agreement between the agent and licensee; and~~

~~(B) To funds received from the sale of travelers' checks.~~

~~23-41-111. Application for license.~~

~~(a) Every application for a license required under this chapter shall be in writing, signed by the applicant, in the form prescribed by the Securities Commissioner, and shall be submitted under oath.~~

~~(b) The application shall contain:~~

~~(1) The name and principal business address of the applicant and, if incorporated, the date and place of its incorporation;~~

~~(2) The name and address of each of the applicant's branch offices, subsidiaries, or affiliates, if any, which will be operated under the license;~~

~~(3) The name and address, business and residential, of the proprietor or partners of the applicant or, if the applicant is a corporation or association, of each of the directors, trustees, and principal officers and of any stockholder who owns twenty percent (20%) or more of the applicant's stock;~~

~~(4) A description of applicant's business and mode of operation;~~

~~(5) The name and address of each agent and location in this state through which checks will be issued or sold pursuant to the license;~~

~~(6) The name of every other state in which the applicant has applied for or has been granted a license or authorization to sell or issue or is selling or issuing checks; and~~

~~(7) Other pertinent information as the commissioner may require.~~

~~(c) The application must be accompanied by:~~

~~(1) A surety bond or securities as required by this chapter;~~

~~(2) Evidence of the ability of the applicant to meet the requirements of this chapter, which requirements may include, among other information, an audited financial statement satisfactory to the commissioner, showing that the applicant's minimum net worth is equal to or in excess of five hundred thousand dollars (\$500,000);~~

~~(3) A nonrefundable fee of one thousand five hundred dollars (\$1,500) for processing of the initial application. The applicant shall also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. However, such additional expenses shall not exceed the sum of one hundred dollars (\$100) per day for each examiner~~

~~required for the investigation, plus travel expenses, if appropriate; and~~

~~(4) A license fee in the amount specified in § 23-41-113, which fee may be prorated on the basis of the licensing year as provided by the commissioner.~~

~~(d) As used in this section, "applicant" means the person holding or seeking a license pursuant to this chapter, any director or officer of such person, or any person who controls such person.~~

~~23-41-112. Approval or denial of application.~~

~~(a) The Securities Commissioner shall have the authority to investigate the financial condition, responsibility, business experience, background character, general fitness, and conduct of the applicant or licensee, and any partners, directors, trustees, officers, or employees for the purpose of determining whether a license should be issued to the applicant or whether a licensee has committed any act or omission that could constitute grounds for denial, suspension, or revocation of a license issued under this chapter.~~

~~(b)(1) The commissioner shall approve an application for a license within ninety (90) days from the date of filing and shall approve a renewal of a license within thirty (30) days of filing. However, the commissioner may deny an application or a renewal if, after notice and opportunity for a hearing, the commissioner makes any of the following findings in a written order of denial:~~

~~(A) The granting of the license will be against the public interest;~~

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

~~(C) The applicant is not of good business reputation;~~

~~(D) The applicant is lacking in integrity. For purposes of this subdivision (b)(1)(D), the commissioner may find that an applicant is lacking in integrity if the applicant, or any person who controls the applicant, or any director or officer of the applicant, has been convicted of, or has pled guilty or nolo contendere to, any crime involving fraud or dishonesty. This shall not be deemed to constitute the only grounds upon which the commissioner may find that the applicant is lacking in integrity;~~

~~(E) The applicant or any person acting on behalf of the applicant has knowingly made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact or has knowingly omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;~~

~~(F) The applicant has previously engaged in any fraudulent practice or act or has conducted any business in an unlawful or dishonest manner;~~

~~(G) The applicant has shown incompetence or untrustworthiness in the conduct of any business or has, by commission of a wrongful act or practice in the course of business, exposed the public or those dealing with the applicant to the danger of loss;~~

~~(H) The applicant has knowingly failed to perform a duty~~

~~expressly imposed upon the applicant by this chapter, or has knowingly committed an act expressly forbidden by this chapter;~~

~~(I) The applicant has been convicted of, or pled guilty to:~~

~~(i) A felony; or~~

~~(ii) Any crime involving moral turpitude;~~

~~(J) The applicant has knowingly aided or abetted any person in any act or omission which could constitute grounds for denial, suspension, or revocation of a license issued under this chapter;~~

~~(K) The applicant has knowingly permitted any person in its employ to violate any provision of this chapter; or~~

~~(L) The applicant fails or refuses to pay any fee required herein.~~

~~(2) As used in this section, "applicant" means the person holding or seeking a license pursuant to this chapter, any director or officer of such person, or any person who controls such person.~~

~~23-41-113. License fees — Renewal.~~

~~(a) Except as provided in § 23-41-111(e)(4), before any license is issued or renewed, the applicant or licensee shall pay an annual license fee in the amount of seven hundred fifty dollars (\$750).~~

~~(b) A license issued pursuant to this chapter expires on December 31 of the year in which it is issued, and thereafter expires on December 31 of each year unless it is earlier surrendered, suspended, or revoked.~~

~~(c) The license may be renewed from year to year upon payment of the fee required by this section and approval of the Securities Commissioner, provided that the licensee files an application for renewal stating any changes from the original application of the licensee at least thirty (30) days before the expiration of his current license and provided that the applicant continues to comply with all provisions of this chapter and all regulations and rules hereunder.~~

~~23-41-114. Surety bond.~~

~~(a) Each applicant shall submit prior to issuance of a license, and shall maintain in force at all times during which he is licensed, a surety bond payable to the Securities Commissioner for the benefit of any holder of any outstanding check sold or issued by the licensee or its agents in the principal sum of two hundred fifty thousand dollars (\$250,000).~~

~~(b)(1) The bond shall:~~

~~(A) Be in a form satisfactory to the commissioner;~~

~~(B) Be issued by a bonding company authorized to do business in this state; and~~

~~(C) Secure the faithful performance of the obligation of the applicant and its agents with respect to the receipt of money and the issuance and sale of checks in connection thereto.~~

~~(2) The aggregate liability of the surety shall in no event exceed the principal sum of the bond.~~

~~(c)(1) In the event of the rendering of a judgment against a licensee in an amount in excess of ten percent (10%) of the net worth of the licensee, the licensee shall, within ten (10) days after the notice of entry of such judgment against it by any creditor or claimant arising out of the business regulated by this chapter, give notice thereof to the commissioner by~~

~~registered or certified mail with details sufficient to identify the action or judgment.~~

~~(2) The surety or licensee shall, within ten (10) days after it pays any claim or judgment to such a creditor or claimant, give notice thereof to the commissioner by registered or certified mail with details sufficient to identify the creditor or claimant and the claim or judgment so paid.~~

~~(d) Whenever the principal sum of the bond is reduced by recoveries against it or payments thereon, the licensee shall furnish:~~

~~(1) A new or additional bond so that the total or aggregate principal sum of the bonds equals the sum required under subsection (a) of this section; or~~

~~(2) An endorsement duly executed by the surety reinstating the bond to the required principal sum.~~

~~(e) The liability of the surety on the bond to any such creditor or claimant shall not be affected by any misrepresentation, breach of warranty, failure to pay a premium, or other act or omission of the licensee or by any insolvency or bankruptcy of the licensee.~~

~~(f) The liability of the surety shall continue as to all transactions entered into in good faith by the creditors and claimants with the licensee's agents within thirty (30) days after the earlier of:~~

~~(1) The licensee's death or the dissolution or liquidation of his business; or~~

~~(2) The termination of the bond.~~

~~(g) Whenever the commissioner determines that the protection of the public so requires, he may order that an increase be made in the principal sum of the original bond of any licensee. However, the increase shall not exceed two hundred fifty thousand dollars (\$250,000).~~

~~(h) Neither a licensee nor his surety may cancel or alter such a bond except after notice to the commissioner by registered or certified mail. The cancellation or alteration is not effective until thirty (30) days after receipt of the notice by the commissioner. A cancellation or alteration does not affect any liability incurred or accrued on the bond before the expiration of the thirty day period set forth in subsection (f) of this section.~~

~~23-41-115. Deposit of securities in lieu of bond.~~

~~(a) In lieu of any bond required under this chapter, the licensee may deposit with the Securities Commissioner securities with a market value equal to the amount of any such bond.~~

~~(b) The securities shall consist of:~~

~~(1) General obligations of, or obligations fully guaranteed by, the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or~~

~~(2) Direct general obligations of the State of Arkansas or of any county, city, town, school district, or other political subdivision or municipal corporation of the State of Arkansas.~~

~~(c) The securities shall be held by the commissioner to secure the same obligation as would any bond required by this chapter.~~

~~(d) The securities so deposited may, with the approval of the commissioner, be exchanged from time to time for other securities receivable as aforesaid. All the securities shall be subject to sale and transfer and to~~

~~the disposal of the proceeds by the commissioner only on the order of a court of competent jurisdiction.~~

~~(e) So long as the licensee depositing shall continue solvent, the licensee shall be permitted to receive the interest or dividends on the deposit of securities.~~

~~(f) The commissioner may provide for custody of the securities by any qualified trust company or bank located in the State of Arkansas or by any Federal Reserve bank. The compensation, if any, of the custodian for acting as such under this section shall be paid by the depositing licensee.~~

~~23-41-116. [Repealed.]~~

~~23-41-117. Minimum net worth — Investments — Proceeds of sale.~~

~~(a) Each licensee under this chapter shall at all times maintain a minimum net worth of at least five hundred thousand dollars (\$500,000).~~

~~(b)(1) Each licensee shall at all times maintain permissible investments having a value, computed in accordance with generally accepted accounting principles, equal to or greater than the aggregate liabilities of the licensee with respect to checks sold or issued and outstanding and money or credits received for transmission.~~

~~(2) As used in this section, "permissible investment" shall mean:~~

~~(A) Cash;~~

~~(B) Certificates of deposit or other debt instruments of a financial institution, which debt instruments are insured by an agency of the federal government and which are readily marketable;~~

~~(C) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are eligible for purchase by member banks of the federal reserve system;~~

~~(D) Commercial paper of prime quality as defined by a nationally recognized organization that rates such paper;~~

~~(E) Investment securities that are obligations of the United States or any of its agencies or instrumentalities, or obligations which are guaranteed fully as to principal and interest by the United States or any obligations of any state, municipality, or of any political subdivision of a state or municipality;~~

~~(F) Shares in a money market fund or interest-bearing bills, notes, or bonds;~~

~~(G) Any common or preferred stock traded on a national securities exchange. Investments in stock under this subdivision shall not exceed ten percent (10%) of the amount of permissible investments held by a licensee or twenty percent (20%) of the net worth of the licensee, whichever is less; and~~

~~(H) Any other investments approved by the Securities Commissioner.~~

~~(e)(1) All funds collected or received from the sale of checks by an agent shall be impressed with a trust in favor of such licensee in an amount equal to the amount of the proceeds due the licensee and shall not be commingled with other funds of the agent.~~

~~(2) No proceeds received by any agent or agents of a licensee from the sale of any check issued by such licensee, while held by the agent, nor any property impressed with a trust pursuant to this section shall be~~

~~subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee. In the event that a licensee's license is revoked by the commissioner, all sales proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the commissioner.~~

~~23-41-118. Conduct of business — Location — Agents.~~

~~Each licensee may conduct his business at those locations within this state, and through or by means of those employees, agents, subagents, or representatives which he may from time to time designate and appoint.~~

~~23-41-119. Semiannual reports.~~

~~(a) Each licensee, on or before July 31 and January 31 of each year, shall file a report with the Securities Commissioner for the preceding one-half (1/2) calendar year.~~

~~(b)(1) The report shall, if the commissioner requests, list the name and address of each agent authorized by the licensee as of the close of business on the last day of the one-half (1/2) calendar year preceding the report to engage in the sale of checks of which the licensee is the issuer.~~

~~(2) The commissioner may require that the report include the annual dollar amount of checks sold by the licensee in Arkansas during the preceding one-half (1/2) calendar year, or the average amount of outstanding liabilities of the licensee from business for which he is licensed, or both amounts.~~

~~(c) A filing fee of twenty five dollars (\$25.00) for each report shall be paid at the time of filing.~~

~~23-41-120. Annual financial statement — Examinations.~~

~~(a) Each licensee shall submit to the Securities Commissioner on an annual basis an audited financial statement covering the licensee's most recent fiscal year ended showing the financial condition of the licensee or owners thereof within ninety (90) days from the end of the licensee's fiscal year. The statement shall be in a form and prepared by an accountant acceptable to the commissioner. A filing fee of twenty five dollars (\$25.00) shall accompany the statement at the time of filing.~~

~~(b)(1) In addition to any other powers or authority conferred by this chapter, and at such times as he may deem proper, the commissioner shall have the authority to examine the books and records of any licensee and any other documents relevant to the conduct of the licensee's business to determine whether such business is being conducted in compliance with this chapter.~~

~~(2) For purposes of these examinations, the commissioner may enter upon any of the business premises of a licensee or his agents during normal business hours and request access to the relevant documents. Any obstruction or denial of such entry or access is a violation of this chapter.~~

~~(c) The commissioner shall charge and collect from the licensee a reasonable fee in an amount sufficient to cover the cost of any examination. However, the fee shall not exceed the sum of one hundred dollars (\$100) per day for each examiner required for the examination, plus travel expenses when necessary or appropriate, up to a maximum of a total of one thousand dollars (\$1,000) per year.~~

~~23-41-121. Investigations — Delegation of authority.~~

~~(a) The Securities Commissioner may conduct any necessary investigations and hearings to determine whether any licensee or other person has violated any of the provisions of this chapter or whether any licensee has conducted himself in a manner which requires the suspension, revocation, or denial of renewal of his license.~~

~~(b) For the purposes of this chapter, the commissioner has power to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under hearing or investigation pursuant to this chapter and shall issue subpoenas at the request of an interested party.~~

~~(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Chancery Court of Pulaski County, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or any employee of the State Securities Department designated by him, and there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court shall be punished by the court as a contempt of court.~~

~~(d) The commissioner may require any licensee to submit such reports concerning his business as the commissioner deems necessary for the enforcement of this chapter.~~

~~(e) Except as provided in § 23-41-104(e), all reports of investigations and examinations and other reports rendered pursuant to this section and all correspondence, memoranda, or information relating to or arising therefrom, including any authenticated copies thereof in the possession of any licensee or the commissioner, are confidential communications, are not subject to any subpoena, and shall not be made public unless the commissioner determines that justice and the public advantage will be served by their publication. This subsection does not preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.~~

~~(f) The commissioner, subject to such restrictions as he in his discretion deems appropriate, may delegate to any appropriate staff member or other employee of the State Securities Department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary, or of whatever character, vested by this chapter in the commissioner.~~

~~23-41-122. Suspension, revocation, or surrender of license.~~

~~(a) The Securities Commissioner may, upon fifteen (15) days' notice to the licensee, stating the contemplated action and in general the grounds therefor, hold a hearing at which the licensee shall have a reasonable opportunity to be heard for the purpose of determining whether a license should be suspended or revoked for failure of the licensee to comply with the provisions of this chapter and the regulations hereunder.~~

~~(b) At the conclusion of the hearing, the commissioner shall enter an order either dismissing the charges or suspending or revoking the license. The suspension or revocation shall be effective from the date of entry of the order by the commissioner or such other time as set forth therein.~~

~~(c) The grounds for suspension or revocation of a license are:~~

~~(1) Any act or omission which would constitute grounds for denial of a license under § 23-41-112(b);~~

~~(2) Failure of the licensee to maintain in effect the required bond or securities;~~

~~(3) A finding that the licensee is conducting its business in an unsafe or unsound manner;~~

~~(4) A finding that the licensee is insolvent;~~

~~(5) Violation of any provision of this chapter, any rule promulgated hereunder, or any order issued by the commissioner pursuant to this chapter; or~~

~~(6) The existence of any fact or condition which, had it existed at the time of the original application for a license, would have constituted grounds for denying the application for a license.~~

~~(d)(1) If the commissioner finds that it is necessary for the protection of the interests of purchasers or holders of checks issued by the licensee or for the protection of the public interest that he immediately suspend or revoke the license of such licensee, then the commissioner may issue an order summarily suspending or revoking the license of the licensee.~~

~~(2) Within thirty (30) days after an order is issued pursuant to this subsection, any licensee to whom the order is issued may file a written request with the commissioner for a hearing on the order.~~

~~(3) The commissioner shall commence the hearing within fifteen (15) business days after the request is made.~~

~~(4) Within thirty (30) days after the hearing, the commissioner shall affirm, modify, or vacate the order.~~

~~(e) A licensee may surrender any license by delivering to the commissioner written notice that he surrenders the license, but the surrender shall not affect the licensee's civil or criminal liability or liability on any bond or entitle the licensee to a return of any part of any license fee.~~

~~(f) If a license is surrendered, suspended, or revoked, the licensee shall immediately deposit in an account in the name of the commissioner an amount which is sufficient to make the total funds in the account equal to all outstanding checks sold or issued in the State of Arkansas and money or credits received but not transmitted."~~

The Amendment was read _____
By: Representative Bond
DLP/SML - 03-14-2007 14:05 _____
DLP421 Chief Clerk