

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/15/07

# A Bill

HOUSE BILL 2516

5 By: Representative Bond  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE SALE OF CHECKS ACT TO INCLUDE  
10 REGULATION OF PAYMENT INSTRUMENTS IN ELECTRONIC  
11 OR OTHER FORMATS; TO AUTHORIZE THE SECURITIES  
12 COMMISSIONER TO ORDER UNLICENSED CHECK ISSUERS TO  
13 CEASE AND DESIST FROM VIOLATIONS OF THE SALE OF  
14 CHECKS ACT; AND FOR OTHER PURPOSES.

## Subtitle

16 TO AMEND THE SALE OF CHECKS ACT TO  
17 INCLUDE REGULATION OF PAYMENT  
18 INSTRUMENTS IN ELECTRONIC OR OTHER  
19 FORMATS AND TO AUTHORIZE INCREASED  
20 REGULATION BY THE SECURITIES  
21 COMMISSIONER UNDER THE ACT.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 *SECTION 1. Arkansas Code § 23-41-101 is amended to read as follows:*  
28 *23-41-101. Title.*

29 *This chapter shall be known and may be cited as the "~~Sale of Checks~~*  
30 *Money Services Act".*

31  
32 *SECTION 2. Arkansas Code § 23-41-102 is amended to read as follows:*  
33 *23-41-102. Definitions.*

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

35 *(1) "Agent" means "~~subagents~~" of the licensee or other*  
36 *~~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 a person authorized to provide money services on behalf of the licensee, whether or not the person was solicited by or deals directly with the licensee;~~

(2)(A) "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, traveler's check, or other instrument, whether composed of paper, plastic, a magnetic or electronic record, or other medium, or any combination thereof, for the transmission or payment of money, monetary value, or credit, whether or not negotiable.

(B) "Check" does not include:

(i) Money or currency of any nation; or

(ii) A credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services;

(3) "Commissioner" means the Securities Commissioner or his or her designee;

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

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

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

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

(8)(A) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government.

(B) "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more governments;

~~(9)~~ "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;

1           (10) "Money services" means money transmission or the sale or  
 2 issuance of checks or other financial or payment instruments;

3           (11)(A) "Money transmission" means selling or issuing checks,  
 4 payment instruments, or stored value or receiving money or monetary value for  
 5 transmission.

6           (B) "Money transmission" does not include the provision  
 7 solely of delivery, online or telecommunications services, or network access;

8           ~~(8)~~(12) "Net worth" means the excess of assets over liabilities  
 9 as determined by generally accepted accounting principles;

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

13           ~~(9)~~(14) "Person" means any individual, partnership, joint-stock  
 14 association, trust, unincorporated association, ~~or~~ corporation, ~~and~~, business  
 15 trust, estate, limited liability company, joint venture, government,  
 16 governmental subdivision, agency, or instrumentality or any other legal or  
 17 commercial entity;

18           (15) "Record" means information that is inscribed on a tangible  
 19 medium or that is stored in an electronic or other medium and is retrievable  
 20 in perceivable form;

21           (16) "Stored value" means monetary value that is evidenced by an  
 22 electronic record, whether or not in electronic form; and

23           (17) "Writing" means a check or instrument for which a record  
 24 exists.

25  
 26           SECTION 3. Arkansas Code § 23-41-103(b), concerning exempt  
 27 transactions, is amended to read as follows:

28           (b) This chapter shall not apply to ~~the sale or issuance of checks~~  
 29 money services provided by:

30           (1) ~~The United States or any department or agency of the United~~  
 31 States; Any agency or corporate instrumentality of the United States or any  
 32 state operating under the specific authority of any state or of the United  
 33 States; or

34           (2) Banks, credit unions, and savings and loan associations  
 35 organized under the laws of this state, another state, or of the United  
 36 States and insured by the United States, the Federal Deposit Insurance

1 Corporation, the National Credit Union Administration, or any other agency  
2 thereof of the United States, and authorized to do business in this state.

3  
4 SECTION 4. Arkansas Code § 23-41-104 is amended to read as follows:  
5 23-41-104. Penalty - Enforcement.

6 (a) Any person is guilty of a Class ~~A misdemeanor~~ B felony who  
7 purposely:

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) From which or into which the violator directed any postal,

1 telephonic, electronic, or other communication in furtherance of the  
2 violation.

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

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

9 (g)(1) If it appears to the commissioner that any person has engaged  
10 in or is about to engage in an act or practice constituting a violation of  
11 any provision, rule, or order under this chapter, the commissioner may order  
12 the person to cease and desist from the act or practice.

13 (2) Upon the entry of the order, the commissioner shall promptly  
14 notify the person that the order has been entered, of the reasons for the  
15 order, and of that person's right to a hearing on the order.

16 (3) A hearing shall be held on the written request of the person  
17 aggrieved by the order if the request is received by the commissioner within  
18 thirty (30) days of the date of the entry of the order or if ordered by the  
19 commissioner.

20 (4) If a hearing is not requested and none is ordered by the  
21 commissioner, the order remains in effect until it is modified or vacated by  
22 the commissioner.

23 (5) If a hearing is held, the commissioner may affirm, modify,  
24 or vacate the order after the hearing.

25 (h)(1) The commissioner may apply to the Pulaski County Circuit Court  
26 to temporarily or permanently enjoin any act or practice that violates any  
27 provision, rule, or order under this chapter and to enforce compliance with  
28 this chapter.

29 (2)(A) Upon a proper showing by the commissioner, the Pulaski  
30 County Circuit Court shall grant a permanent or temporary injunction,  
31 restraining order, or writ of mandamus.

32 (B) The Pulaski County Circuit Court shall not require the  
33 commissioner to post a bond.

34 (i) The commissioner may also seek and upon proper showing the  
35 appropriate court shall grant any other relief that may be in the public  
36 interest, including without limitation:

1           (1) The appointment of a receiver, temporary receiver, or  
 2 conservator;  
 3           (2) A declaratory judgment;  
 4           (3) An accounting;  
 5           (4) Disgorgement of profits; or  
 6           (5) Assessment of a fine of not more than five thousand dollars  
 7 (\$5,000) for each violation of this subchapter or any rule promulgated under  
 8 this subchapter.

9           (j) This chapter does not prohibit or restrict the informal  
 10 disposition of a proceeding or allegations that might give rise to a  
 11 proceeding by stipulation, settlement, consent, or default in lieu of a  
 12 formal or informal hearing on the allegations or in lieu of the sanctions  
 13 authorized by this chapter.

14  
 15           SECTION 5. Arkansas Code § 23-41-107 is amended to read as follows:  
 16           23-41-107. Notice.

17           Except as otherwise provided in this chapter, whenever the Securities  
 18 Commissioner is required to give notice to any person, applicant, or  
 19 licensee, the notice requirement ~~shall be~~ is complied with if, within the  
 20 ~~time times~~ times fixed in §§ 23-41-104(g) and 23-41-122, the notice ~~shall be~~ is:

21           (1) ~~enclosed~~ Enclosed in an envelope with United States postage  
 22 fully prepaid and plainly addressed to the person, applicant, or licensee,  
 23 at:

24           (A) ~~the~~ The address set forth in the application or  
 25 license; or

26           (B) In the case of a nonlicensed person, any address from  
 27 which the person is conducting business or where the person resides ~~United~~  
 28 ~~States postage fully prepaid;~~ and

29           (2) ~~deposited~~ Deposited registered or certified in the United  
 30 States mail or by any other form of delivery requiring a signature of the  
 31 person or the agent of the person.

32  
 33           SECTION 6. Arkansas Code § 23-41-108(c)(1) concerning venue for the  
 34 appointment of a receiver, is amended to read as follows:

35           (c)(1) Whenever a licensee has refused or is unable to pay its  
 36 obligations generally as they become due or whenever it appears to the

1 commissioner that a licensee is in an unsafe or unsound condition, the  
 2 commissioner, or the Attorney General representing the commissioner, may  
 3 apply to the ~~Chancery Court~~ of Pulaski County Circuit Court or to the  
 4 ~~chancery circuit~~ court of any county in which the licensee is located for the  
 5 appointment of a receiver for the licensee. The court may require the  
 6 receiver to post a bond in such amount as may appear necessary to protect  
 7 claimants of the licensee.

8  
 9 SECTION 7. Arkansas Code § 23-41-110 is amended to read as follows:  
 10 23-41-110. License required.

11 (a)(1) ~~No~~ A person located in this state shall not engage in the  
 12 business of selling or issuing checks providing money services as a service  
 13 ~~or~~ for a fee or other consideration without first securing a license to do so  
 14 from the Securities Commissioner under this chapter.

15 (2)(A) A person shall not engage in the business of providing  
 16 money services as a service or for a fee or other consideration with a person  
 17 located in this state without first securing a license from the commissioner  
 18 under this chapter.

19 (B) For purposes of this subdivision (a)(2), a person  
 20 located outside of this state who delivers money or monetary value only to a  
 21 person located in this state shall not be deemed to be engaged in the  
 22 business of providing money services so long as no fee or other consideration  
 23 is received by or on behalf of the person located outside of this state from  
 24 the person to whom the money or monetary value is delivered.

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

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

35 (2) Bank statements relating to checks so returned or money  
 36 transmitted by the agent.

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

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

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

14 (B) To funds received from the sale of travelers' checks.  
15

16 SECTION 8. Arkansas Code § 23-41-111 is amended to read as follows:  
17 23-41-111. Application for license.

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

21 (b) The application shall contain:

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

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

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

32 (4) A description of the applicant's business and mode of  
33 operation;

34 (5) The name and address of each agent and location in this  
35 state through which money services will be provided or checks will be issued  
36 or sold pursuant to the license;



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

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

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

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

7           (2) Evidence of the ability of the applicant to meet the  
8 requirements of this chapter, which requirements may include, among other  
9 information, an audited financial statement prepared in accordance with  
10 generally accepted accounting principles satisfactory to the commissioner,  
11 showing that the applicant's minimum net worth is equal to or in excess of  
12 five hundred thousand dollars (\$500,000);

13           (3) A nonrefundable fee of one thousand five hundred dollars  
14 (\$1,500) for processing of the initial application. The applicant shall also  
15 pay such additional expenses incurred in the process of investigation as the  
16 commissioner deems necessary. However, such additional expenses shall not  
17 exceed the sum of one hundred dollars (\$100) per day for each examiner  
18 required for the investigation, plus travel expenses, if appropriate; and

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

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

25  
26       SECTION 9. Arkansas Code § 23-41-112(b), concerning the time within  
27 which the Securities Commissioner must act on an application for license, is  
28 amended to read as follows:

29       (b)(1) ~~The~~ Unless a proceeding is commenced by the commissioner to  
30 deny an application or a renewal application, the commissioner shall approve  
31 an application for a license within ~~ninety (90)~~ one hundred twenty (120) days  
32 from the date of filing a completed application and shall approve a renewal  
33 of a license within thirty (30) days of filing a completed renewal  
34 application.

35       (2) However, the commissioner may deny an application for an  
36 initial license or a renewal of a license if, after notice and opportunity

1 for a hearing, the commissioner makes any of the following findings in a  
2 written order of denial:

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

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

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

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

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

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

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

31 (H) The applicant has knowingly failed to perform a duty  
32 expressly imposed upon the applicant by this chapter, or has knowingly  
33 committed an act expressly forbidden by this chapter;

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

36 (i) A felony; or

- 1 (ii) Any crime involving moral turpitude;
- 2 (J) The applicant has knowingly aided or abetted any
- 3 person in any act or omission which could constitute grounds for denial,
- 4 suspension, or revocation of a license issued under this chapter;
- 5 (K) The applicant has violated any provision of this
- 6 chapter or any rule or order promulgated or issued pursuant to this chapter
- 7 or has knowingly permitted any person in its employ to violate any provision
- 8 of this chapter or any rule or order promulgated or issued pursuant to this
- 9 chapter; ~~or~~
- 10 (L) The applicant fails or refuses to pay any fee required
- 11 herein;
- 12 (M) The applicant or any agent or other person acting on
- 13 the applicant's behalf has engaged in unethical conduct or practice or has
- 14 conducted business in an unethical manner; or
- 15 (N) The applicant or any agent or other person acting on
- 16 the applicant's behalf has unreasonably failed to provide information or
- 17 documents pursuant to a written request by the commissioner.
- 18 ~~(2)~~(3) As used in this section, "applicant" ~~shall mean~~ means the
- 19 person holding or seeking a license pursuant to this chapter, any director or
- 20 officer of ~~such~~ the person, or any person who controls ~~such~~ the person.
- 21 ~~(3)~~(4)(A) If an applicant fails to make a reasonable attempt to
- 22 complete an application for an initial license within sixty (60) days from
- 23 the date on which the staff notifies the applicant at the address listed in
- 24 the application by regular mail of any deficiencies that exist in the
- 25 completion of the application, the commissioner may deem the application
- 26 abandoned and notify the applicant that the application will not be granted.
- 27 (B) Any subsequent application filed by the applicant
- 28 shall be treated as a new application and shall be accompanied by the
- 29 requirements for a new application as set forth in § 23-41-111, including
- 30 payment of the application fee set forth in that section.

31

32 SECTION 10. Arkansas Code § 23-41-117(c), concerning money held in

33 trust by a check issuer, is amended to read as follows:

34 (c)(1) All funds collected or received from the sale of checks or for

35 money transmission by an agent shall be impressed with a trust in favor of

36 such licensee in an amount equal to the amount of the proceeds due the

1 licensee and shall not be commingled with other funds of the agent.

2 (2)(A) No proceeds received by any agent or agents of a licensee  
3 from the sale of any check money transmission issued by ~~such~~ the licensee,  
4 while held by the agent, nor any property impressed with a trust pursuant to  
5 this section shall be subject to attachment, levy of execution, or  
6 sequestration by order of any court, except for the benefit of the licensee.

7 (B) ~~In the event that~~ If a licensee's license is revoked  
8 by the commissioner, all sales proceeds and money for transmission then held  
9 in trust by agents of that licensee shall be deemed to have been assigned to  
10 the commissioner.

11  
12 SECTION 11. Arkansas Code § 23-41-118 is amended to read as follows:

13 23-41-118. Conduct of business - Location - Agents - Change of  
14 control.

15 (a) Each licensee may conduct ~~his~~ the licensee's business at those  
16 locations within this state, and through or by means of those employees,  
17 agents, subagents, or representatives ~~which he~~ that the licensee may from  
18 time to time designate and appoint.

19 (b) A licensee proposing a change of control of the licensee or a  
20 person that controls the licensee shall:

21 (1) Give the Securities Commissioner fifteen (15) days' written  
22 notice of the proposed change of control accompanied by a request for  
23 approval of the change of control; and

24 (2) Receive the commissioner's approval before the change of  
25 control and pay a nonrefundable fee of two hundred fifty dollars (\$250).

26 (c)(1) The commissioner may require the licensee to provide additional  
27 information considered relevant by the commissioner to determine the request  
28 for a change of control concerning the proposed persons in control of the  
29 licensee. The request for additional information may include any  
30 information.

31 (2) A request for a change of control is not complete until all  
32 information requested by the commissioner has been furnished to the  
33 commissioner.

34 (3) The commissioner shall notify the licensee in writing of the  
35 date on which the request for a change of control was determined to be  
36 complete.

1       (d)(1) The commissioner shall approve a request for change of control  
2 within one hundred twenty (120) days of the completion of the request under  
3 subsection (c) of this section if after investigation the commissioner  
4 determines that:

5               (A) The person or group of persons acquiring control has  
6 the competence, experience, character, and general fitness to operate the  
7 licensee or person in control of the licensee in a lawful and proper manner;

8               (B) The public interest will not be jeopardized by the  
9 change of control; and

10              (C) No other grounds for denial of a license under § 23-  
11 41-112(b) exist.

12              (2) If the request for a change of control is not approved or  
13 denied within one hundred twenty (120) days after the request was determined  
14 to be complete under subsection (c) of this section:

15                      (1) The request is approved; and

16                      (2) The change of control takes effect on the first  
17 business day after expiration of the one hundred twenty (120) days.

18              (e)(1) This section does not apply to a change of control resulting  
19 from a public offering of securities.

20              (2) A person may obtain a determination from the commissioner of  
21 whether a person would be considered a person in control of a licensee upon  
22 the completion of a proposed transaction.

23              (3) If the commissioner determines that the person would not be  
24 a person in control of a licensee, the commissioner shall notify the person  
25 in writing and the proposed transaction shall not be subject to the  
26 requirements of this section.

27  
28       SECTION 12. Arkansas Code § 23-41-119(b), concerning semiannual  
29 reports required to be filed with by check issuers, is amended to read as  
30 follows:

31              (b)(1) ~~The report shall, if the commissioner requests,~~ If requested by  
32 the commissioner the report shall list the name and address of each agent  
33 authorized by the licensee as of the close of business on the last day of the  
34 one-half (1/2) calendar year preceding the report to engage in the sale of  
35 checks of which the licensee is the issuer or the transmission of money on  
36 behalf of the licensee.

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

6  
7           SECTION 13. Arkansas Code § 23-41-120 is amended to read as follows:  
8           23-41-120. Annual financial statement - Examinations.

9           (a)(1) Each licensee shall submit to the ~~commissioner~~ Securities  
10 Commissioner on an annual basis an audited financial statement covering the  
11 licensee's most recent fiscal year ended showing the financial condition of  
12 the licensee or owners thereof within ninety (90) days from the end of the  
13 licensee's fiscal year.

14           (2) The statement shall be prepared in accordance with generally  
15 accepted accounting principles in a form acceptable to the commissioner and  
16 prepared by an accountant acceptable to the commissioner.

17           (3) A filing fee of twenty-five dollars (\$25.00) shall accompany  
18 the statement at the time of filing.

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

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

30           (c) The commissioner ~~shall~~ may charge and collect from the licensee a  
31 reasonable fee in an amount sufficient to cover the cost of any examination.  
32 However, the fee shall not exceed the sum of one hundred dollars (\$100) per  
33 day for each examiner required for the examination, plus travel expenses when  
34 necessary or appropriate, up to a maximum of a total of one thousand dollars  
35 (\$1,000) per year.

36

1           SECTION 14. Arkansas Code § 23-41-121(c), concerning enforcement of  
2 subpoenas, is amended to read as follows:

3           (c)(1) In case of contumacy by, or refusal to obey a subpoena issued  
4 to, any person, the ~~Chancery Court~~ of Pulaski County Circuit Court, upon  
5 application by the commissioner, may issue ~~to the person~~ an order requiring  
6 ~~him~~ the person to:

7                   (A) ~~appear~~ Appear before the commissioner, or any employee  
8 of the State Securities Department designated by ~~him~~ the commissioner; and

9                   (B) ~~there to produce~~ Produce documentary evidence if so  
10 ordered or to give evidence touching the matter under investigation or in  
11 question.

12           (2) Failure to obey the order of the court shall be punished by  
13 the court as a contempt of court.

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15           SECTION 15. Arkansas Code § 23-41-122(a), concerning suspension or  
16 revocation of a license, is amended to read as follows:

17           (a) ~~The Securities Commissioner may, upon fifteen (15) days' notice to~~  
18 ~~the licensee, stating the contemplated action and in general the grounds~~  
19 ~~therefor, Upon fifteen (15) days' notice to the licensee stating the~~  
20 ~~contemplated action and in general the grounds for the action, the Securities~~  
21 ~~Commissioner may~~ hold a hearing at which the licensee shall have a reasonable  
22 opportunity to be heard for the purpose of determining whether a license  
23 should be suspended or revoked for failure of the licensee to comply with the  
24 provisions of this chapter ~~and the regulations hereunder or any rule or order~~  
25 issued under this chapter.

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27           SECTION 16. Arkansas Code Title 23, Chapter 41, Subchapter 1 is  
28 amended to add an additional section to read as follows:

29           23-41-123. Public inspection of records – Exceptions.

30           (a)(1) Unless otherwise specified in this section, all information  
31 filed with the Securities Commissioner shall be available for public  
32 inspection under rules promulgated by the commissioner consistent with state  
33 and federal law governing the disclosure of public information.

34           (b) Except for reasonably segregable portions of information and  
35 records that by law would routinely be made available to a party other than  
36 an agency in litigation with the commissioner, the commissioner shall not

1 publish or make available:

2 (1) Information contained in reports, summaries, analyses,  
3 letters, or memoranda arising out of, in anticipation of, or in connection  
4 with an investigation, examination, or inspection of the books and records of  
5 any person;

6 (2) Interagency or intra-agency memoranda or letters, including  
7 without limitation:

8 (A) Records that reflect discussions between or  
9 consideration by the commissioner or members of his or her staff, or both, of  
10 any action taken or proposed to be taken by the commissioner or by any  
11 members of his or her staff; and

12 (B) Unless by law routinely made available to a party  
13 other than an agency in litigation with the commissioner, reports, summaries,  
14 analyses, conclusions, or any other work product of the commissioner or of  
15 attorneys, accountants, analysts, or other members of the commissioner's  
16 staff, prepared in the course of an:

17 (i) Inspection of the books or records of a person  
18 whose affairs are regulated by the commissioner; or

19 (ii) Examination, investigation, or litigation  
20 conducted by or on behalf of the commissioner;

21 (3) Personnel files, medical files, and similar files if  
22 disclosure would constitute a clearly unwarranted invasion of personal  
23 privacy, including without limitation:

24 (A) Information concerning all employees of the State  
25 Securities Department and all persons subject to regulation by the  
26 department; and

27 (B) Personal information reported to the commissioner  
28 under the department's rules concerning registration about employees of check  
29 issuers, money transmitters, money services providers, or their agents;

30 (4)(A) Investigatory records compiled for law enforcement  
31 purposes to the extent that production of the records would:

32 (i) Interfere with enforcement proceedings;

33 (ii) Deprive a person of a right to a fair trial or  
34 an impartial adjudication; or

35 (iii) Disclose the identity of a confidential  
36 source.



1  
2 (B) The commissioner may also withhold investigatory  
3 records that would:

4 (i) Constitute an unwarranted invasion of personal  
5 privacy;

6 (ii) Disclose investigative techniques and  
7 procedures; or

8 (iii) Endanger the life or physical safety of law  
9 enforcement personnel.

10 (C) As used in this section, "investigatory records"  
11 includes:

12 (i) All documents, records, transcripts,  
13 correspondence, and related memoranda and work products concerning  
14 examinations and other investigations and related litigation as authorized by  
15 law that pertain to or may disclose the possible violation by any person of  
16 any provision of the statutes or rules administered by the commissioner; and

17 (ii) All written communications from or to any  
18 person confidentially complaining or otherwise furnishing information  
19 respecting a possible violation, as well as all correspondence and memoranda  
20 in connection with the confidential complaints or information;

21 (5) Information contained in or related to examinations,  
22 operating reports, or condition reports prepared by, on behalf of, or for the  
23 use of any agency responsible for the regulation or supervision of financial  
24 institutions, check issuers, money transmitters, or money services providers;

25 (6)(A) Financial records of check issuers, money transmitters,  
26 money services providers, or their agents obtained during or as a result of  
27 an examination by the commissioner.

28 (B) However, when a record under this subchapter is  
29 required to be filed with the commissioner as part of an application for  
30 license, annual renewal, or otherwise, the record, including financial  
31 statements prepared by certified public accountants, shall be public  
32 information unless sections of the information are bound separately and are  
33 marked "confidential" by the check issuer, money transmitter, money services  
34 provider, or agent upon filing.

35 (C) Information under subdivision (b)(6)(B) of this  
36 section bound separately and marked "confidential" shall be deemed nonpublic

1 until ten (10) days after the commissioner has given the check issuer, money  
2 transmitter, money services provider, or agent notice that an order will be  
3 entered deeming the material public information.

4 (D) A check issuer, money transmitter, or money services  
5 provider may seek an injunction from the Pulaski County Circuit Court  
6 ordering the commissioner to withhold the information as nonpublic pending a  
7 final order from a court of competent jurisdiction if the order of the  
8 commissioner under subdivision (b)(6)(C) of this section is appealed under  
9 applicable law;

10 (7) Trade secrets obtained from any person; or

11 (8) Any other records that are required to be closed to the  
12 public and are not deemed open to public inspection under the Freedom of  
13 Information Act of 1967, § 25-19-101 et seq., or under other law.

14  
15 SECTION 17. TEMPORARY LANGUAGE. DO NOT CODIFY. The enactment and  
16 adoption of this act shall not repeal, expressly or impliedly, any act passed  
17 at the regular session of the 86th General Assembly that adopts the Uniform  
18 Money Services Act. Any act that adopts the Uniform Money Services Act shall  
19 have full effect and, so far as that act varies from or conflicts with any  
20 provision contained in this act, the act that adopts the Uniform Money  
21 Services Act shall supersede this act.

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23 /s/ Bond  
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