

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 *As Engrossed: H3/15/07 H3/22/07 H3/29/07*

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 2518

4

5 By: Representative Bond

6

7

8

For An Act To Be Entitled

9

AN ACT TO ADOPT THE UNIFORM MONEY SERVICES ACT;

10

AND FOR OTHER PURPOSES.

11

12

Subtitle

13

TO ADOPT THE UNIFORM MONEY SERVICES ACT.

14

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

17

18

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

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CHAPTER 55 -- UNIFORM MONEY SERVICES ACT

22

23

ARTICLE 1 -- GENERAL PROVISIONS

24

25

23-55-101. Short title.

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

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28

23-55-102. Definitions.

29

In this chapter:

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(1) "Applicant" means a person that files an application for a

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license under this Act.

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(2) "Authorized delegate" means a person a licensee designates

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to provide money services on behalf of the licensee.

34

(3) "Bank" means an institution organized under federal or state

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law which:

36

(A) accepts demand deposits or deposits that the depositor



1 may use for payment to third parties and engages in the business of making
2 commercial loans; or

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

8 (4) "Commissioner" means the Securities Commissioner.

9 (5) "Control" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29
30 23-55-103. Exclusions.

31 This chapter does not apply to:

32 (1) the United States or a department, agency, or
33 instrumentality thereof;

34 (2) money transmission by the United States Postal Service or by
35 a contractor on behalf of the United States Postal Service;

36 (3) a state, county, city, or any other governmental agency or

1 governmental subdivision of a State;

2 (4) a bank, bank holding company, office of an international
3 banking corporation, branch of a foreign bank, corporation organized pursuant
4 to the Bank Service Corporation Act, 12 U.S.C. Section 1861-1867 (Supp. V
5 1999), or corporation organized under the Edge Act, 12 U.S.C. Section 611-633
6 (1994 & Supp. V 1999), under the laws of a State or the United States if it
7 does not issue, sell, or provide payment instruments or stored value through
8 an authorized delegate that is not such a person;

9 (5) electronic funds transfer of governmental benefits for a
10 federal, state, county, or governmental agency by a contractor on behalf of
11 the United States or a department, agency, or instrumentality thereof, or a
12 State or governmental subdivision, agency, or instrumentality thereof;

13 (6) a board of trade designated as a contract market under the
14 federal Commodity Exchange Act, 7 U.S.C. Section 1-25 (1994), or a person
15 that, in the ordinary course of business, provides clearance and settlement
16 services for a board of trade to the extent of its operation as or for such a
17 board;

18 (7) a registered futures commission merchant under the federal
19 commodities laws to the extent of its operation as such a merchant;

20 (8) a person that provides clearance or settlement services
21 pursuant to a registration as a clearing agency or an exemption from such
22 registration granted under the federal securities laws to the extent of its
23 operation as such a provider;

24 (9) an operator of a payment system to the extent that it
25 provides processing, clearing, or settlement services, between or among
26 persons excluded by this section, in connection with wire transfers, credit
27 card transactions, debit card transactions, stored-value transactions,
28 automated clearing house transfers; similar funds transfers; or

29 (10) a person registered as a securities broker-dealer under
30 federal or state securities laws to the extent of its operation as such a
31 broker-dealer; or

32 (11) a credit union regulated and insured by the National Credit
33 Union Association.

34
35 ARTICLE 2 -- MONEY TRANSMISSION LICENSES
36

1 23-55-201. License required.

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

5 (1) is licensed under this subchapter or approved to engage in
6 money transmission under § 23-55-203;

7 (2) is an authorized delegate of a person licensed under this
8 subchapter; or

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

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

12
13 23-55-202. Application for license.

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

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

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

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

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

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

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

1 applicant in another State;

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

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

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

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

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

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

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

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

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

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

26 (5) a list of any criminal convictions and material litigation
27 in which any executive officer, manager, director, or person in control of,
28 the applicant has been involved in the 10-year period next preceding the
29 submission of the application;

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

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

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

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

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

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

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

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

18 (d) A nonrefundable application fee of \$1,500 and a license fee of
19 \$750 must accompany an application for a license under this subchapter. The
20 license fee must be refunded if the application is denied.

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

24
25 23-55-203. Approval to engage in money transmission when licensed in
26 another state.

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

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

35 (2) the person submits to, and in the form required by, the
36 commissioner;

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

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

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

6 (b) When an application for approval under this section is complete,
7 the commissioner shall promptly notify the applicant, in a record, of the
8 date on which the request was determined to be complete and:

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

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

13 (A) the request is approved; and

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

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

21
22 23-55-204. Security.

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

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

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

35 (d) A surety bond must cover claims for so long as the commissioner
36 specifies, but for at least five years after the licensee ceases to provide

1 money services in this State. However, the commissioner may permit the amount
2 of security to be reduced or eliminated before the expiration of that time to
3 the extent the amount of the licensee's payment instruments or stored-value
4 obligations outstanding in this State is reduced. The commissioner may permit
5 a licensee to substitute another form of security acceptable to the
6 commissioner for the security effective at the time the licensee ceases to
7 provide money services in this State.

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

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

15
16 23-55-205. Issuance of license.

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

25 (1) the applicant has complied with §§ 23-55-202, 23-55-204, and
26 23-55-207; and

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

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

36 (1) the commissioner shall approve or deny the application

1 within 120 days after that date; or

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

4 (A) the application is deemed approved; and

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

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

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

12
13 23-55-206. Renewal of license.

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

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

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

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

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

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

35 (5) proof that the licensee continues to maintain adequate
36 security as required by § 23-55-204; and

1 (6) a list of the locations in this State where the licensee or
2 an authorized delegate of the licensee engages in money transmission or
3 provides other money services.

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

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

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

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

16
17 23-55-207. Net worth.

18 A licensee under this subchapter shall maintain a net worth of at least
19 \$250,000 determined in accordance with generally accepted accounting
20 principles.

21
22 ARTICLE 3 -- [Reserved.]

23
24 ARTICLE 4 -- CURRENCY EXCHANGE LICENSES

25
26 23-55-401. License required.

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

31 (1) is licensed under this subchapter;

32 (2) is licensed for money transmission under Article 2, § 23-55-
33 201 et seq., or approved to engage in money transmission under § 23-55-203;

34 (3) is an authorized delegate of a person licensed under Article
35 2, § 23-55-201 et seq.; or

36 (4) is an authorized delegate of a person approved to engage in

1 money transmission under § 23-55-203.

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

3
4 23-55-402. Application for license.

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

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

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

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

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

18 (5) other information the commissioner reasonably requires with
19 respect to the applicant, but not more than the commissioner may require
20 under subchapter 2.

21 (b) A nonrefundable application fee of \$1,500 and a license fee of
22 \$750 must accompany an application for a license under this subchapter. The
23 license fee must be refunded if the application is denied.

24
25 23-55-403. Issuance of license.

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

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

34 (2) the financial condition and responsibility, financial and
35 business experience, competence, character, and general fitness of the
36 applicant; and the competence, experience, character, and general fitness of

1 the executive officers, managers, directors, and persons in control of, the
2 applicant indicate that it is in the interest of the public to permit the
3 applicant to engage in currency exchange.

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

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

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

11 (A) the application is deemed approved; and

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

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

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

19
20 23-55-404. Renewal of License.

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

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

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

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

34 (c) If a licensee does not file a renewal report and pay its renewal
35 fee by the renewal date or any extension of time granted by the commissioner,
36 the commissioner shall send the licensee a notice of suspension. Unless the

1 licensee files the report and pays the renewal fee before expiration of 10
2 days after the notice is sent, the licensee's license is suspended 10 days
3 after the commissioner sends the notice of suspension.

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

6
7 ARTICLE 5--AUTHORIZED DELEGATES

8
9 23-55-501. Relationship between licensee and authorized delegate.

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

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

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

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

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

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

34
35 23-55-502. Unauthorized activities.

36 A person may not provide money services on behalf of a person not

1 licensed under this chapter. A person that engages in that activity provides
2 money services to the same extent as if the person were a licensee.

3
4 ARTICLE 6--EXAMINATIONS – REPORTS – RECORDS

5
6 23-55-601. Authority to conduct examinations.

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

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

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

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

20
21 23-55-602. Cooperation.

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

26
27 23-55-603. Reports.

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

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

1 (c) A licensee shall file a report with the commissioner within three
2 business days after the licensee has reason to know of the occurrence of any
3 of the following events:

4 (1) the filing of a petition by or against the licensee under the
5 United States Bankruptcy Code, 11 U.S.C. Section 101-110 (1994 & Supp. V.
6 1999), for bankruptcy or reorganization;

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

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

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

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

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

21
22 23-55-604. Change of control.

23 (a) A licensee shall:

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

27 (2) request approval of the acquisition; and

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

29 (b) After review of a request for approval under subsection (a), the
30 commissioner may require the licensee to provide additional information
31 concerning the proposed persons in control of the licensee. The additional
32 information must be limited to the same types required of the licensee or
33 persons in control of the licensee as part of its original license or renewal
34 application.

35 (c) The commissioner shall approve a request for change of control
36 under subsection (a) if, after investigation, the commissioner determines

1 that the person or group of persons requesting approval has the competence,
2 experience, character, and general fitness to operate the licensee or person
3 in control of the licensee in a lawful and proper manner and that the public
4 interest will not be jeopardized by the change of control.

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

8 (1) the commissioner shall approve or deny the request within
9 120 days after that date; or

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

12 (A) the request is deemed approved; and

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

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

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

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

28
29 23-55-605. Records.

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

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

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

36 (3) bank statements and bank reconciliation records;

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

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

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

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

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

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

14 (d) All records maintained by the licensee as required in subsections
15 (a) through (c) are open to inspection by the commissioner pursuant to § 23-
16 55-601.

17
18 23-55-606. Money laundering reports.

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

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

29
30 23-55-607. Confidentiality.

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

35 (b) Except for reasonably segregable portions of information and
36 records that by law would routinely be made available to a party other than

1 an agency in litigation with the commissioner, the commissioner shall not
2 publish or make available:

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

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

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

13 (B) Reports, summaries, analyses, conclusions, or any
14 other work product of the commissioner or of attorneys, accountants,
15 analysts, or other members of the commissioner's staff, prepared in the
16 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
29 applicants, licensees, 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 (B) The commissioner may also withhold investigatory
2 records that would:

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

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

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

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

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

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

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

25 (6)(A) Financial records of any applicant, licensee, or the
26 agent of an applicant or licensee obtained during or as a result of an
27 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 applicant, licensee, or agent upon filing.

34 (C) Information under subdivision (b)(6)(B) of this
35 section bound separately and marked "confidential" shall be deemed nonpublic
36 until ten (10) days after the commissioner has given the applicant, licensee,

1 or agent notice that an order will be entered deeming the material public
2 information.

3 (D) An applicant, licensee, or agent may seek an
4 injunction from the Pulaski County Circuit Court ordering the commissioner to
5 withhold the information as nonpublic pending a final order from a court of
6 competent jurisdiction if the order of the commissioner under subdivision
7 (b)(6)(C) of this section is appealed under applicable law;

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

9 (8) Any other records that are required to be closed to the
10 public and are not deemed open to public inspection under other law.

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

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

21
22 ARTICLE 7--PERMISSIBLE INVESTMENTS

23
24 23-55-701. Maintenance of permissible investments.

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

30 (b) The commissioner, with respect to any licensees, may limit the
31 extent to which a type of investment within a class of permissible
32 investments may be considered a permissible investment, except for money and
33 certificates of deposit issued by a bank. The commissioner by rule may
34 prescribe or by order allow other types of investments that the commissioner
35 determines to have a safety substantially equivalent to other permissible
36 investments.

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

5
6 23-55-702. Types of permissible investments.

7 (a) Except to the extent otherwise limited by the commissioner
8 pursuant to Section 701, the following investments are permissible under §
9 23-55-701:

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

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

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

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

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

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

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

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

10 (2) a share of a person traded on a national securities exchange
11 or a national over-the-counter market or a share or a certificate issued by
12 an open-end management investment company that is registered with the United
13 States Securities and Exchange Commission under the Investment Companies Act
14 of 1940, 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and whose
15 portfolio is restricted by the management company's investment policy to
16 shares of a person traded on a national securities exchange or a national
17 over-the-counter market, if the aggregate of investments under this paragraph
18 does not exceed 20 percent of the total permissible investments of a licensee
19 and the licensee does not at one time hold investments in any one person
20 aggregating more than 10 percent of the licensee's total permissible
21 investments;

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

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

33 (c) The aggregate of investments under subsection (b) may not exceed
34 50 percent of the total permissible investments of a licensee calculated in
35 accordance with § 23-55-701.

36

1 ARTICLE 8--ENFORCEMENT

2
3 23-55-801. Suspension and revocation.

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

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

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

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

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

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

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

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

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

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

31
32 23-55-802. Suspension and revocation of authorized delegates.

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

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

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

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

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

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

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

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

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

22
23 23-55-803. Orders to cease and desist.

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

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

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

1 801 or § 23-55-802.

2
3 23-55-804. Consent orders.

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

12
13 23-55-805. Civil penalties.

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

19
20 23-55-806. Criminal penalties.

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

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

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

34
35 23-55-807. Unlicensed persons.

36 (a) If the commissioner has reason to believe that a person has

1 violated or is violating § 23-55-201 or § 23-55-401 the commissioner may
2 issue an order to show cause why an order to cease and desist should not
3 issue requiring that the person cease and desist from the violation of § 23-
4 55-201 or § 23-55-401.

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

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

10 (d) An order to cease and desist remains effective and enforceable
11 pending the completion of an administrative proceeding pursuant to §§ 23-55-
12 901 and 23-55-902.

13
14 23-55-808. Receivership.

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

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

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

35
36 ARTICLE 9--ADMINISTRATIVE PROCEDURES

1
2 23-55-901. Administrative proceedings.

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

6
7 23-55-902. Hearings.

8 Except as otherwise provided in §§ 23-55-206(c), 23-55-404(c), 23-55-
9 803, and 23-55-807, the commissioner may not suspend or revoke a license,
10 issue an order to cease and desist, suspend or revoke the designation of an
11 authorized delegate, or assess a civil penalty without notice and an
12 opportunity to be heard. The commissioner shall also hold a hearing when
13 requested to do so by an applicant whose application for a license is denied.

14
15 ARTICLE 10--MISCELLANEOUS PROVISIONS

16
17 23-55-1001. Uniformity of application and construction.

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

21
22 23-55-1002. Severability clause.

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

28
29 23-55-1003. Effective date.

30 This chapter takes effect January 1, 2008.

31
32 23-55-1004. [Reserved.]

33
34 23-55-1005. Savings and transitional provisions.

35 (a) A license issued under the Sale of Checks Act, § 23-41-101 et
36 seq., that is in effect immediately before January 1, 2008 remains in force

1 as a license under the Sale of Checks Act, § 23-41-101 et seq., until the
 2 license's expiration date. Thereafter, the licensee is deemed to have applied
 3 for and had received a license under this chapter and must comply with the
 4 renewal requirements set forth in this chapter.

5 (b) This chapter applies to the provision of money services on or
 6 after January 1, 2008. This chapter does not apply to money transmission
 7 provided by a licensee who was licensed to provide money transmission under
 8 the Sale of Checks Act, § 23-41-101 et seq., and whose license remains in
 9 force under this section.

10
 11 SECTION 2. Except as provided in § 23-55-1005, effective January 1,
 12 2008, Arkansas Code Title 23, Chapter 41, is repealed.

13 ~~23-41-101. Title.~~

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

15
 16 ~~23-41-102. Definitions.~~

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

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

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

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

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

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

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

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

36 ~~(8) "Net worth" means excess of assets over liabilities as~~

1 ~~determined by generally accepted accounting principles; and~~

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

4
5 ~~23-41-103. Exempt transactions.~~

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

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

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

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

17
18 ~~23-41-104. Penalty—Enforcement.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21
22 ~~23-41-105. Rules and regulations.~~

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

26
27 ~~23-41-106. Disposition of fees.~~

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

31
32 ~~23-41-107. Notice.~~

33 ~~Except as otherwise provided in this chapter, whenever the Securities~~
34 ~~Commissioner is required to give notice to any applicant or licensee, the~~
35 ~~notice requirement shall be complied with if, within the time fixed in § 23-~~
36 ~~41-122, the notice shall be enclosed in an envelope plainly addressed to the~~

1 ~~applicant or licensee, at the address set forth in the application or~~
2 ~~license, United States postage fully prepaid and deposited registered or~~
3 ~~certified in the United States mail.~~

4
5 ~~23-41-108. Discontinuance of business.~~

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

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

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

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

35 ~~(3) The receiver, from time to time, but in no event less~~
36 ~~frequently than once each calendar quarter, shall report to the court with~~

1 ~~respect to all acts and proceedings in connection with the receivership,~~

2

3 ~~23-41-109. Judicial review.~~

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

8

9 ~~23-41-110. License required.~~

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

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

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

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

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

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

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

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

36

1 ~~23-41-111. Application for license.~~

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(3) A nonrefundable fee of one thousand five hundred dollars~~
31 ~~(\$1,500) for processing of the initial application. The applicant shall also~~
32 ~~pay such additional expenses incurred in the process of investigation as the~~
33 ~~commissioner deems necessary. However, such additional expenses shall not~~
34 ~~exceed the sum of one hundred dollars (\$100) per day for each examiner~~
35 ~~required for the investigation, plus travel expenses, if appropriate; and~~

36 ~~(4) A license fee in the amount specified in § 23-41-113, which~~

1 ~~fee may be prorated on the basis of the licensing year as provided by the~~
2 ~~commissioner.~~

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

6
7 ~~23-41-112. Approval or denial of application.~~

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

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

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

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

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

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

35 ~~(E) The applicant or any person acting on behalf of the~~
36 ~~applicant has knowingly made or caused to be made in any application or~~

1 ~~report filed with the commissioner, or in any proceeding before the~~
2 ~~commissioner, any statement which was, at the time and in light of the~~
3 ~~circumstances under which it was made, false or misleading with respect to~~
4 ~~any material fact or has knowingly omitted to state in any such application,~~
5 ~~report, or proceeding any material fact which is required to be stated~~
6 ~~therein;~~

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

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

14 ~~(H) The applicant has knowingly failed to perform a duty~~
15 ~~expressly imposed upon the applicant by this chapter, or has knowingly~~
16 ~~committed an act expressly forbidden by this chapter;~~

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

19 ~~(i) A felony; or~~

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

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

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

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

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

31
32 ~~23-41-113. License fees—Renewal.~~

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

36 ~~(b) A license issued pursuant to this chapter expires on December 31~~

1 ~~of the year in which it is issued, and thereafter expires on December 31 of~~
2 ~~each year unless it is earlier surrendered, suspended, or revoked.~~

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

10
11 ~~23-41-114. Surety bond.~~

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

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

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

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

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

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

26 ~~(c)(1) In the event of the rendering of a judgment against a licensee~~
27 ~~in an amount in excess of ten percent (10%) of the net worth of the licensee,~~
28 ~~the licensee shall, within ten (10) days after the notice of entry of such~~
29 ~~judgment against it by any creditor or claimant arising out of the business~~
30 ~~regulated by this chapter, give notice thereof to the commissioner by~~
31 ~~registered or certified mail with details sufficient to identify the action~~
32 ~~or judgment.~~

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

1 ~~paid.~~

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

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

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

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

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

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

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

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

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

30

31 ~~23-41-115. Deposit of securities in lieu of bond.~~

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

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

36 ~~(1) General obligations of, or obligations fully guaranteed by,~~

1 ~~the United States or of any agency or instrumentality of or corporation~~
2 ~~wholly owned by the United States directly or indirectly; or~~

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

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

8 ~~(d) The securities so deposited may, with the approval of the~~
9 ~~commissioner, be exchanged from time to time for other securities receivable~~
10 ~~as aforesaid. All the securities shall be subject to sale and transfer and to~~
11 ~~the disposal of the proceeds by the commissioner only on the order of a court~~
12 ~~of competent jurisdiction.~~

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

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

20
21 ~~23-41-116. [Repealed.]~~

22
23 ~~23-41-117. Minimum net worth — Investments — Proceeds of sale.~~

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

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

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

33 ~~(A) Cash;~~

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

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

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

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

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

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

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

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

24 ~~(2) No proceeds received by any agent or agents of a licensee~~
25 ~~from the sale of any check issued by such licensee, while held by the agent,~~
26 ~~nor any property impressed with a trust pursuant to this section shall be~~
27 ~~subject to attachment, levy of execution, or sequestration by order of any~~
28 ~~court, except for the benefit of the licensee. In the event that a licensee's~~
29 ~~license is revoked by the commissioner, all sales proceeds then held in trust~~
30 ~~by agents of that licensee shall be deemed to have been assigned to the~~
31 ~~commissioner.~~

32
33 ~~23-41-118. Conduct of business — Location — Agents.~~

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

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~~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.~~

1 ~~However, the fee shall not exceed the sum of one hundred dollars (\$100) per~~
2 ~~day for each examiner required for the examination, plus travel expenses when~~
3 ~~necessary or appropriate, up to a maximum of a total of one thousand dollars~~
4 ~~(\$1,000) per year.~~

5
6 ~~23-41-121. Investigations—Delegation of authority.~~

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

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

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

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

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

1 ~~any information or document otherwise available or admissible.~~

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

8
9 ~~23-41-122. Suspension, revocation, or surrender of license.~~

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

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

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

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

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

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

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

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

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

34 ~~(d)(1) If the commissioner finds that it is necessary for the~~
35 ~~protection of the interests of purchasers or holders of checks issued by the~~
36 ~~licensee or for the protection of the public interest that he immediately~~

1 ~~suspend or revoke the license of such licensee, then the commissioner may~~
2 ~~issue an order summarily suspending or revoking the license of the licensee.~~

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

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

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

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

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

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20 /s/ Bond
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