

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 450

4
5 By: Senator J. Key
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For An Act To Be Entitled

8
9 AN ACT TO AMEND THE UNIFORM MONEY SERVICES ACT, §
10 23-55-101 ET SEQ.; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND THE UNIFORM MONEY SERVICES ACT,
14 § 23-55-101 ET SEQ.
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 23-55-102(8), concerning the definition of
20 "licensee" under the Uniform Money Services Act, is amended to read as
21 follows:

22 (8) "Licensee" means a person licensed or approved under this
23 chapter.
24

25 SECTION 2. Arkansas Code § 23-55-102(11), concerning the definition of
26 "money services" under the Uniform Money Services Act, is amended to read as
27 follows:

28 (11) "Money services" means money transmission, ~~check cashing,~~
29 or currency exchange.
30

31 SECTION 3. Arkansas Code § 23-55-102(12), concerning the definition of
32 "money transmission" under the Uniform Money Services Act, is amended to read
33 as follows:

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



1 ~~online or telecommunications services, or network access.~~

2 (B) "Money transmission" does not include providing
 3 delivery services such as courier or package delivery services or acting as a
 4 mere conduit for the transmission of data.

5
 6 SECTION 4. Arkansas Code Title 23, Chapter 55, Subchapter 1 is amended
 7 to add an additional section to read as follows:

8 23-55-104. Administration and rules.

9 (a) The Securities Commissioner shall administer this chapter.

10 (b) The commissioner may:

11 (1) Make, amend, and rescind any rules, forms, and orders that
 12 the commissioner deems necessary or appropriate to carry out this chapter,
 13 including without limitation rules and forms governing applications and
 14 reports; and

15 (2) Define any terms, whether or not used in this chapter, if
 16 consistent with this chapter.

17 (c) A rule, form, or order shall not be made, amended, or rescinded
 18 unless the commissioner finds that the action is:

19 (1) Necessary or appropriate in the public interest or for the
 20 protection of consumers; and

21 (2) Consistent with the purposes fairly intended by the policy
 22 and provisions of this chapter.

23 (d) All rules and forms of the commissioner shall be published.

24
 25 SECTION 5. Arkansas Code § 23-55-201(a), concerning engaging in the
 26 business of money transmission, is amended to read as follows:

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

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

32 (2) is an authorized delegate of a person licensed under this
 33 subchapter; ~~or~~

34 (3) is an authorized delegate of a person approved to
 35 engage in money transmission under § 23-55-203-~~r~~; or

36 (4) is excluded under § 23-55-103.

1
2 SECTION 6. Arkansas Code § 23-55-202(c), concerning money transmission
3 licenses, is amended to read as follows:

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

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

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

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

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

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

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

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

28 (8) if the applicant is publicly traded, a copy of the most
29 recent report filed with the United States Securities and Exchange Commission
30 under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m
31 (1994 & Supp. V 1999);

32 (9) evidence of the applicant's registration or qualification to
33 do business in this state;

34 ~~(9)~~(10) if the applicant is a wholly owned subsidiary of:

35 (A) a corporation publicly traded in the United States, a
36 copy of audited financial statements for the parent corporation for the most

1 recent fiscal year or a copy of the parent corporation's most recent report
 2 filed under § 13 of the federal Securities Exchange Act of 1934, 15 U.S. C. §
 3 78m (1994 & Supp. V 1999); or

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

7 ~~(10)~~(11) if the applicant has a registered agent in this State,
 8 the name and address of the applicant's registered agent in this State; and

9 ~~(11)~~(12) any other information the commissioner reasonably
 10 requires with respect to the applicant.

11
 12 SECTION 7. Arkansas Code § 23-55-202, concerning money transmission
 13 license applications, is amended to add an additional subsection to read as
 14 follows:

15 (f) The application shall be accompanied by the surety bond required
 16 by § 23-55-204.

17
 18 SECTION 8. Arkansas Code § 23-55-203(a)(2), concerning persons
 19 licensed in other states to engage in money transmission, is amended to read
 20 as follows:

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

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

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

27 (C) a certification of license history in the other
 28 state; ~~and~~

29 (D) a surety bond as set out in § 23-55-204.

30
 31 SECTION 9. Arkansas Code § 23-55-204 is amended to read as follows:
 32 23-55-204. Security.

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

1 to engage in money services.

2 (b) ~~Security~~ The surety bond must be in a form satisfactory to the
3 ~~commissioner~~ Securities Commissioner and payable to the State for the benefit
4 of any claimant against the licensee to secure the faithful performance of
5 the obligations of the licensee with respect to money transmission.

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

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

19 (e) ~~In lieu of the security prescribed in this section, an applicant~~
20 ~~for a license or a licensee may provide security in a form prescribed by the~~
21 ~~commissioner.~~ [Repealed.]

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

26
27 SECTION 10. Arkansas Code § 23-55-205(d), concerning appeal and
28 request for a hearing following denial of a licensing application, is amended
29 to read as follows:

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

33
34 SECTION 11. Arkansas Code § 23-55-402(a)(3) and (4), concerning an
35 application for a currency exchange license, are amended to read as follows:

36 (3) complete addresses of other locations in this State where

1 the applicant proposes to engage in currency exchange ~~or check-cashing~~,
 2 including all limited stations and mobile locations;

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

6 SECTION 12. Arkansas Code § 23-55-404(b)(2), concerning the renewal of
 7 a currency exchange license, is amended to read as follows:

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

12 SECTION 13. Arkansas Code § 23-55-601 is amended to read as follows:

13 23-55-601. Authority to conduct examinations and investigations.

14 (a) The ~~commissioner~~ Securities Commissioner or the commissioner's
 15 designee may conduct an annual examination of a licensee or of any of its
 16 authorized delegates upon 45 days' notice in a record to the licensee.

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

22 (c)(1) ~~If the commissioner concludes that an on-site examination is~~
 23 ~~necessary under subsection (a), the~~ The licensee, applicant, or person
 24 subject to licensing under this chapter shall pay the reasonable cost of the
 25 examination a fee for each examination, not to exceed one hundred fifty
 26 dollars (\$150) per examiner for each day or for part of a day during which
 27 the examiner is absent from the office of the commissioner for the purpose of
 28 conducting the examination.

29 (2) In addition to the fee prescribed under subdivision (c)(1)
 30 of this section, the licensee, applicant, or person subject to licensing
 31 under this chapter shall pay the hotel and traveling expenses of each
 32 examiner traveling to and from the office of the commissioner while the
 33 examiner is conducting the examination.

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

36 (e) The commissioner may:

1 (1) Make any investigations within or outside of this state that
2 he or she deems necessary to determine whether a person has violated or is
3 about to violate this chapter or any rule or order under this chapter, or to
4 aid in the enforcement of this chapter;

5 (2) Require or permit a person to file a sworn, written
6 statement or submit any other form of evidence concerning the matter to be
7 investigated; and

8 (3) Publish information concerning a violation of this chapter
9 or a rule or order issued under this chapter.

10 (f) For the purpose of an investigation or proceeding under this
11 chapter, the commissioner or the commissioner's designee may:

12 (1) Administer oaths and affirmations;

13 (2) Subpoena and compel the attendance of witnesses;

14 (3) Take evidence; and

15 (4) Require the production of books, papers, correspondence,
16 memoranda, agreements, or other documents or records that the commissioner
17 deems relevant or material to the inquiry.

18 (g)(1) In case of contumacy by or the refusal to obey a subpoena
19 issued to a person, the Pulaski County Circuit Court upon application by the
20 commissioner may order the person to appear before the commissioner or the
21 commissioner's designee to testify or produce documentary or other evidence
22 concerning the matter under investigation or in question.

23 (2) Failure to obey the order of the court may be punished by
24 the court as a contempt of court.

25 (h)(1) A person shall not refuse to appear, testify, or produce
26 evidence before the commissioner or the commissioner's designee on the ground
27 that the testimony or evidence may tend to incriminate the person or subject
28 the person to a penalty or forfeiture.

29 (2)(A) After claiming a privilege against self-incrimination, an
30 individual shall not be prosecuted or subjected to a penalty or forfeiture
31 for or on account of a transaction, matter, or thing concerning which the
32 individual is compelled to testify or produce evidence, documentary or
33 otherwise.

34 (B) However, an individual is not exempt from prosecution
35 and punishment for perjury or contempt committed while testifying or
36 producing evidence, documentary or otherwise.

1 (i)(1) To aid an examination or investigation under this chapter, the
2 commissioner or the commissioner's designee may at any time examine:

3 (A) The business of a licensee, an authorized delegate of
4 a licensee, or any other person engaged in the business of providing money
5 services, whether the person acts or claims to act under or without the
6 authority of this chapter; and

7 (B) Wherever located, the books, accounts, records,
8 papers, documents, files, and other information used in the business of a
9 licensee, an authorized delegate of a licensee, or any other person engaged
10 in the business of providing money services, whether the person acts or
11 claims to act under or without the authority of this chapter.

12 (2) The commissioner or the commissioner's designee shall have
13 free access to the offices and places of business, books, accounts, papers,
14 documents, other information, records, files, safes, and vaults to conduct
15 the examination or investigation under this section.

16
17 SECTION 14. Arkansas Code § 23-55-602 is amended to read as follows:

18 The ~~commissioner~~ Securities Commissioner may consult and cooperate with
19 other state money services regulators and agencies of the United States
20 Government in enforcing and administering this chapter. They may jointly
21 pursue examinations and take other official action that they are otherwise
22 empowered to take.

23
24 SECTION 15. Arkansas Code § 23-55-605(b), concerning record retention,
25 is amended to read as follows:

26 (b) The items specified in subsection (a) may be maintained
27 photographically, electronically, or in any other form of record allowed by
28 the commissioner.

29
30 SECTION 16. Arkansas Code Title 23, Chapter 55, Subchapter 6 is
31 amended to add an additional section to read as follows:

32 23-55-608. Disclosure requirements.

33 (a) A licensee shall provide its name and mailing address or telephone
34 number to the purchaser in connection with each money transmission or
35 currency exchange transaction conducted by the licensee directly or through
36 an authorized delegate.

1 **(b) An authorized delegate shall display prominently in a form and in**
 2 **a medium prescribed by the Securities Commissioner a notice that states or**
 3 **contains the following information:**

4 **(1) The name, mailing address, and telephone number of the**
 5 **authorized delegate;**

6 **(2) For each licensee of the authorized delegate:**

7 **(A) A statement that the authorized delegate is an agent**
 8 **conducting business on behalf of the licensee under this chapter; and**

9 **(B) The name, mailing address, and telephone number of the**
 10 **licensee; and**

11 **(3) A statement:**

12 **(A) Directing consumers with complaints to contact the**
 13 **Securities Department; and**

14 **(B) Containing the current mailing address and telephone**
 15 **number of the department.**

16
 17 SECTION 17. Arkansas Code § 23-55-803 is amended to read as follows:
 18 23-55-803. Orders to cease and desist.

19 (a) If the ~~commissioner~~ Securities Commissioner determines that a
 20 violation of this chapter or of a rule adopted or an order issued under this
 21 chapter by a licensee, ~~or~~ authorized delegate, or any other person is likely
 22 to cause immediate and irreparable harm to the licensee, its customers, or
 23 the public as a result of the violation, or cause insolvency or significant
 24 dissipation of assets of the licensee, the commissioner may issue ~~an~~ a
 25 summary order requiring the licensee, ~~or~~ authorized delegate, or any other
 26 person to cease and desist from the violation. The order becomes effective
 27 upon service of it upon the licensee, ~~or~~ authorized delegate, or any other
 28 person.

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

32 (c) An order to cease and desist remains effective and enforceable
 33 pending the completion of an administrative proceeding pursuant to ~~§ 23-55-~~
 34 ~~801 or § 23-55-802~~ § 23-55-901 or § 23-55-902 and the entry of a subsequent
 35 order to affirm, modify, or vacate the order by the commissioner.

SECTION 18. Arkansas Code § 23-55-807 is amended to read as follows:
23-55-807. Unlicensed persons.

~~(a)(1) If the commissioner has reason to believe that a person has violated or is violating § 23-55-201 or § 23-55-401 the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of § 23-55-201 or § 23-55-401. [Repealed.]~~

(2) If as a result of an investigation or examination the Securities Commissioner finds that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order under this chapter, the commissioner may summarily issue:

(A) A cease and desist order under § 23-55-803; or

(B) An order to prohibit the person from continuing to engage in providing money services.

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

(c)(1) An order to cease and desist becomes effective upon service of it upon the person.

(2) A hearing shall be held on the written request of the person aggrieved by the order to cease and desist if the request is received by the commissioner within thirty (30) days of the date of the entry of the order to cease and desist or if ordered by the commissioner.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to §§ 23-55-901 and 23-55-902 and the entry of a subsequent order by the commissioner to affirm, modify, or vacate the order.

(e) The commissioner may apply to the Pulaski County Circuit Court to:

(1) Temporarily or permanently enjoin an act or practice that violates this chapter or a rule or order under this chapter; or

(2) Enforce compliance with this chapter or a rule or order under this chapter.