

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.  
Act 486 of the Regular Session

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

# A Bill

SENATE BILL 450

4  
5 By: Senator J. Key  
6  
7

## 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.  
15  
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



1 transmission. ~~The term does not include the provision solely of delivery,~~  
 2 ~~online or telecommunications services, or network access.~~

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

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

9 23-55-104. Administration and rules.

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

11 (b) The commissioner may:

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

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

18 (c) A rule, form, or order shall not be made, amended, or rescinded  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

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

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

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

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

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

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

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

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

1           (4) is excluded under § 23-55-103.

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

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

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

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

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

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

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

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

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

29                   (8) if the applicant is publicly traded, a copy of the most  
30 recent report filed with the United States Securities and Exchange Commission  
31 under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m  
32 (1994 & Supp. V 1999);

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

35           ~~(9)~~(10) if the applicant is a wholly owned subsidiary of:

36                   (A) a corporation publicly traded in the United States, a

1 copy of audited financial statements for the parent corporation for the most  
 2 recent fiscal year or a copy of the parent corporation's most recent report  
 3 filed under § 13 of the federal Securities Exchange Act of 1934, 15 U.S. C. §  
 4 78m (1994 & Supp. V 1999); or

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

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

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

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

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

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

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

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

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

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

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

31  
 32 SECTION 9. Arkansas Code § 23-55-204 is amended to read as follows:  
 33 23-55-204. Security.

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

1 addition of \$250,000, must accompany an application for a license or approval  
2 to engage in money services.

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

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

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

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

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

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

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

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

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

4 (4) a description of the source of money and credit to be used  
 5 by the applicant to engage in ~~check-cashing and~~ currency exchange; and  
 6

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

9 (2) a list of the locations in this State where the licensee or  
 10 an authorized delegate of the licensee engages in currency exchange ~~or check~~  
 11 ~~cashing~~, including limited stations and mobile locations.  
 12

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

14 23-55-601. Authority to conduct examinations and investigations.

15 (a) ~~The commissioner~~ Securities Commissioner or the commissioner's  
 16 designee may conduct an annual examination of a licensee or of any of its  
 17 authorized delegates upon 45 days' notice in a record to the licensee.  
 18

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

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

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

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

1           (e) The commissioner may:

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

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

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

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

13                   (1) Administer oaths and affirmations;

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

15                   (3) Take evidence; and

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

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

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

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

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

35                   (B) However, an individual is not exempt from prosecution  
36 and punishment for perjury or contempt committed while testifying or

1 producing evidence, documentary or otherwise.

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

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

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

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

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

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

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

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

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

33 23-55-608. Disclosure requirements.

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

1 an authorized delegate.

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

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

7 (2) For each licensee of the authorized delegate:

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

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

12 (3) A statement:

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

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

17  
18 SECTION 17. Arkansas Code § 23-55-803 is amended to read as follows:  
19 23-55-803. Orders to cease and desist.

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

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

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

1  
2 SECTION 18. Arkansas Code § 23-55-807 is amended to read as follows:  
3 23-55-807. Unlicensed persons.

4 ~~(a)(1) If the commissioner has reason to believe that a person has~~  
5 ~~violated or is violating § 23-55-201 or § 23-55-401 the commissioner may~~  
6 ~~issue an order to show cause why an order to cease and desist should not~~  
7 ~~issue requiring that the person cease and desist from the violation of § 23-~~  
8 ~~55-201 or § 23-55-401. [Repealed.]~~

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

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

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

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

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

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

25 ~~(d) An order to cease and desist remains effective and enforceable~~  
26 ~~pending the completion of an administrative proceeding pursuant to §§ 23-55-~~  
27 ~~901 and 23-55-902 and the entry of a subsequent order by the commissioner to~~  
28 ~~affirm, modify, or vacate the order.~~

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

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

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

34  
35 **APPROVED: 3/19/2009**