

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: S3/3/21
A Bill

SENATE BILL 150

By: Senator J. Dismang
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE UNIFORM MONEY SERVICES ACT; AND
FOR OTHER PURPOSES.

Subtitle

TO AMEND THE UNIFORM MONEY SERVICES ACT.

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

SECTION 1. Arkansas Code § 23-55-102(12), concerning the definition of "money transmission" under the Uniform Money Services Act, is amended to read as follows:

(12)(A) "Money transmission" means selling or issuing payment instruments, stored value, or prepaid access, or receiving money, virtual currency, or monetary value for transmission.

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

SECTION 2. Arkansas Code § 23-55-102(19), concerning the definition of "stored value" under the Uniform Money Services Act, is amended to read as follows:

(19)(A) "Stored value" means monetary value that is evidenced by an electronic record representing a claim against the issuer stored on an electronic or digital medium or device, including without limitation a card, and evidenced by an electronic or digital record, intended and accepted for use as a means of redemption for money or monetary value or payment for goods



or services.

(B) "Stored value" does not include any prepaid access or stored value that is only redeemable by the issuer for goods or services provided by the issuer or an affiliate of the issuer except to the extent required by applicable law to be redeemable in cash for the cash value of the goods or services.

SECTION 3. Arkansas Code § 23-55-102, concerning definitions of the Uniform Money Services Act, is amended to add an additional subdivision to read as follows:

(22)(A) "Virtual currency" means a digital representation of value that:

(i) is used as a medium of exchange, a unit of account, or a store of value; and

(ii) does not have legal tender status as recognized by the United States Department of the Treasury.

(B) "Virtual currency" does not include the software or protocols governing the transfer of a digital representation of value or other uses of a virtual distributed ledger system to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

SECTION 4. Arkansas Code § 23-55-103(4), concerning exclusions of the Uniform Money Services Act, is amended to read as follows:

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

SECTION 5. Arkansas Code § 23-55-103(9), concerning exclusions of the Uniform Money Services Act, is amended to read as follows:

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among

persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, similar funds transfers, ~~or~~ prepaid access, or virtual currency;

SECTION 6. Arkansas Code § 23-55-103, concerning exclusions of the Uniform Money Services Act, is amended to add additional subdivisions to read as follows:

(12) an agent appointed by a payee to collect and process payment as the agent of the payee, if the agent can demonstrate that:

(A) there exists a written agreement between the payee and the agent directing the agent to collect and process payments on behalf of the payee;

(B) the payee holds the agent out to the public as accepting payments on behalf of the payee; and

(C) payment is treated as received by the payee upon receipt by the agent so that there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee;

(13) virtual currency or other digital representation of value redeemable exclusively for goods or services and limited to transactions involving a defined merchant, including without limitation a rewards program;

(14) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or

(15) uses of a virtual distributed ledger system to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

SECTION 7. Arkansas Code § 23-55-202(b), concerning application for a license under the Uniform Money Services Act, is amended to add additional subdivisions to read as follows:

(11) the name of a person submitted by the applicant as the responsible individual and information on that person to include:

(A) legal name;

(B) residential and business addresses;

- (C) date of birth;
 - (D) Social Security number;
 - (E) employment history for the five-year period preceding the submission of the application; and
 - (F) documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;
- (12) for the ten-year period preceding submission of the application, a list of:
- (A) any criminal convictions of the proposed responsible individual of the applicant;
 - (B) any litigation involving the proposed responsible individual relating to the provision of money services; and
 - (C) any material litigation in which the applicant has been involved;
- (13) a list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual of the applicant; and
- (14) information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual of the applicant.

SECTION 8. Arkansas Code § 23-55-202, concerning application for a license under the Uniform Money Services Act, is amended to add an additional subsection to read as follows:

(g)(1) Each officer, director, responsible individual, and owner applicant shall furnish information concerning his or her identity.

(2) The information described in subdivision (g)(1) shall include:

(A) a state and national criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police or the Federal Bureau of Investigation; and

(B) other pertinent facts, as the commissioner may reasonably require.

(3)(A) As part of an application for a license under this chapter, or periodically upon license renewal, the commissioner may receive

criminal history record information that includes nonconviction information as defined in § 12-12-1001.

(B) The State Securities Department may only disseminate nonconviction information obtained under this section to a criminal justice agency.

(4) This subsection does not apply if an applicant or an applicant's corporate parent is a publicly traded entity.

SECTION 9. Arkansas Code § 23-55-205(a), concerning the issuance of licenses under the Uniform Money Services Act, is amended to add an additional subdivision to read as follows:

(3) an applicant, an officer, a person who exercises control over the applicant, or a responsible individual shall not be listed on a specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or as an individual or entity designated by the United States Department of State under Exec. Order No. 13224, issued on September 23, 2001, 66 Fed. Reg. 49079.

SECTION 10. Arkansas Code § 23-55-205, concerning the issuance of licenses under the Uniform Money Services Act, is amended to add an additional subsection to read as follows:

(f)(1) A money transmitter licensee may surrender a license by providing the commissioner with a written notice of surrender through the automated licensing system approved by the commissioner.

(2) The written notice of surrender shall include notice of where the records of the money transmitter licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records.

(3) The surrender of a license does not reduce or eliminate the civil or criminal liability of a money transmitter licensee arising from acts or omissions occurring before the surrender of the license, including any administrative actions undertaken by the commissioner to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter.

SECTION 11. Arkansas Code § 23-55-206(b), concerning a renewal report

under the Uniform Money Services Act, is amended to read as follows:

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

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

~~(2)~~ a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in §§ 23-55-701 and 23-55-702; and

~~(3)~~(2) proof that the licensee continues to maintain an adequate surety bond as required by § 23-55-204.

SECTION 12. Arkansas Code § 23-55-206(c), concerning renewal of a license under the Uniform Money Services Act, is amended to read as follows:

(c) A licensee ~~that does not~~ shall comply with subsections (a) and (b) ~~by December 1 shall pay a late fee of \$250 if the complete renewal application is received before the expiration of the license within thirty~~ (30) days of the renewal date.

SECTION 13. Arkansas Code § 23-55-402(a), concerning the application for a currency exchange license under the Uniform Money Services Act, is amended to add additional subdivisions to read as follows:

(6) the name of a person submitted by the applicant as the responsible individual and information on that person to include:

(A) legal name;

(B) residential and business addresses;

(C) date of birth;

(D) Social Security number;

(E) employment history for the five-year period preceding the submission of the application; and

(F) documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States;

(7) for the ten-year period preceding the submission of the application, a list of any criminal convictions of the proposed responsible

individual of the applicant, any litigation involving the proposed responsible individual relating to the provision of money services, and any material litigation in which the applicant has been involved;

(8) a list of other states in which the applicant engages in currency exchange or provides other money services and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(9) a list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the responsible individual of the applicant; and

(10) information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the responsible individual of the applicant.

SECTION 14. Arkansas Code § 23-55-404(b), concerning a renewal report under the Uniform Money Services Act, is amended to read as follows:

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

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

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

SECTION 15. Arkansas Code § 23-55-501(d), concerning the notice required to be given to authorized delegates if a licensee is suspended, revoked, or fails to renew a license under the Uniform Money Services Act, is amended to read as follows:

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

SECTION 16. Arkansas Code § 23-55-601(c)(1), concerning the authority of the Securities Commissioner to conduct examinations and investigations under the Uniform Money Services Act, is amended to read as follows:

(c)(1) The licensee, applicant, or person subject to licensing under this chapter shall pay a fee for each examination, not to exceed one hundred fifty dollars (\$150) per examiner for each day or for part of a day during which the examiner is ~~absent from the office of the commissioner for the purpose of~~ conducting the examination.

SECTION 17. Arkansas Code § 23-55-603(e), concerning the reports required under the Uniform Money Services Act, is amended to read as follows:

(e) A licensee shall file with the commissioner within 45 days after the end of each calendar quarter, in a form acceptable to the commissioner, a report of the number and monetary amount of payment instruments, stored-value, ~~and~~ prepaid access, and virtual currency sold by the licensee in this State for that quarter, and the monetary amount of payment instruments, stored-value, ~~and~~ prepaid access, and virtual currency currently outstanding.

SECTION 18. Arkansas Code § 23-55-604(g), concerning a change of control under the Uniform Money Services Act, is repealed.

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

SECTION 19. Arkansas Code § 23-55-605(a), concerning the records under the Uniform Money Services Act, is amended to read as follows:

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

(1) a record of each payment instrument, ~~or~~ stored-value, virtual currency, or prepaid access obligation sold;

- (2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
- (3) bank statements and bank reconciliation records;
- (4) records of outstanding payment instruments and stored-value and prepaid access obligations;
- (5) records of each payment instrument, ~~and~~ stored-value, virtual currency, and prepaid access obligation paid within the ~~three-year~~ five-year period;
- (6) a list of the last known names and addresses of all of the licensee's authorized delegates; and
- (7) any other records the commissioner reasonably requires by rule.

SECTION 20. Arkansas Code Title 23, Chapter 55, Subchapter 6, is amended to add an additional section to read as follows:

23-55-609. Policy and procedure – Physical security and cybersecurity.

(a) A money transmitter or currency exchanger licensed or required to be licensed under this chapter shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information.

(b) A policy or procedure described in subsection (a) of this section shall be tailored to the size and sophistication of the money transmitter or currency exchanger.

(c) The Securities Commissioner may impose additional conditions by rule or order to clarify the requirements of a policy or procedure described in subsection (a) of this section.

SECTION 21. Arkansas Code § 23-55-701 is amended to read as follows:

23-55-701. Maintenance of permissible investments.

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

(b) A licensee transmitting virtual currency shall hold like-kind virtual currency of the same volume as that held by the licensee but which is obligated to consumers in lieu of the permissible investments required in subsection (a).

(c) A licensee conducting activities as described in subsections (a) and (b) shall maintain applicable levels and types of permissible investments as described in subsections (a) and (b).

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

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

SECTION 22. Arkansas Code § 23-55-702 is amended to read as follows:

23-55-702. Types of permissible investments.

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

(1) ~~cash;~~
 (2) a bank receivable or credit card receivable;
 (3) a savings deposit, a demand deposit, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813 (1994 & Supp. V 1999);

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

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

~~securities;~~

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

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

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

(b) The following investments are permissible under § 23-55-701, ~~but only to the extent specified~~ if an investment does not exceed 30 percent of:

(1) a short-term investment that is not longer than six months bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(2) commercial paper; and

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

~~(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United~~

~~States Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;~~

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

(c) A savings deposit, a demand deposit, or a certificate of deposit at a foreign depository is permissible under § 23-55-701 if the investment does not exceed 10 percent.

~~(4)(d)~~ any Any other investment is permissible under § 23-55-701 if the commissioner designates, to the extent specified by the commissioner.

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

/s/J. Dismang