

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

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

A Bill

HOUSE BILL 1883

4
5 By: Representative Wells
6 By: Senator Horn

For An Act To Be Entitled

10 AN ACT TO UPDATE AND MAKE TECHNICAL CORRECTIONS
11 TO THE ARKANSAS SECURITIES ACT, 23-42-101 ET
12 SEQ.; AND FOR OTHER PURPOSES.

Subtitle

15 TO UPDATE AND MAKE TECHNICAL CORRECTIONS
16 TO THE ARKANSAS SECURITIES ACT, § 23-42-
17 101 ET SEQ.

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code § 23-42-205(c), concerning investigations by
23 the Securities Commissioner, is amended to read as follows:

24 (c)(1) In case of contumacy by, or refusal to obey a subpoena issued
25 to, any person, the ~~Chancery Court of Pulaski County~~ Circuit Court, upon
26 application by the commissioner, may ~~issue to~~ order the person ~~an order~~
27 ~~requiring him~~ to appear before the commissioner, or the officer designated by
28 ~~him, there~~ the commissioner to produce ~~documentary~~ evidence, ~~if so ordered,~~
29 ~~or to give evidence touching~~ or testify concerning the matter under
30 investigation or in question.

31 (2) Failure to obey the order ~~of the court~~ may be punished ~~by~~ as
32 ~~the court as a~~ contempt of court.

33
34 SECTION 2. Arkansas Code § 23-42-206(a)(3)(B), concerning the
35 permissible handling of documents received by the Securities Commissioner's
36 designee, is amended to read as follows:



1 (B) Transferred to a permanent storage location maintained
 2 by the Central Registration Depository with the ~~National Association of~~
 3 ~~Securities Dealers~~ Financial Industry Regulatory Authority, the Securities
 4 Registration Depository with the North American Securities Administrators
 5 Association, or such other central depository system as may be determined by
 6 the commissioner; or

7
 8 SECTION 3. Arkansas Code § 23-42-206(c), concerning records of the
 9 Securities Commissioner, is amended to read as follows:

10 (c) The commissioner, ~~in his discretion~~, may rely upon and coordinate
 11 with the Securities and Exchange Commission, the ~~National Association of~~
 12 ~~Securities Dealers~~ Financial Industry Regulatory Authority, the Municipal
 13 Securities ~~Rule Making~~ Rulemaking Board, the North American Securities
 14 Administrators Association, and any other securities regulatory agencies
 15 ~~which he deems appropriate~~ for the proper maintenance of certain common
 16 registrations, records, and other documents maintained by the other
 17 regulatory agencies.

18
 19 SECTION 4. Arkansas Code § 23-42-207(b)(6)(C), concerning the public
 20 inspection of records of the Securities Commissioner, is amended to read as
 21 follows:

22 (C) If the broker-dealer, investment adviser, agent, or
 23 representative believes the commissioner's order is incorrect, the broker-
 24 dealer, investment adviser, agent, or representative may seek an injunction
 25 from the ~~Circuit Court or Chancery Court of Pulaski County~~ Circuit Court
 26 ordering the department to hold the information as nonpublic pending a final
 27 order of a court of competent jurisdiction if the order of the commissioner
 28 is appealed pursuant to applicable law;

29
 30 SECTION 5. Arkansas Code § 23-42-208(a), concerning the Securities
 31 Commissioner's cooperation with other regulatory agencies, is amended to read
 32 as follows:

33 (a) The Securities Commissioner may enter into an arrangement,
 34 agreement, or other working relationship with federal, other state, and self-
 35 regulatory authorities whereby documents may be filed and maintained in the
 36 Central Registration Depository with the ~~National Association of Securities~~

1 ~~Dealers~~ Financial Industry Regulatory Authority, the Securities Registration
 2 Depository with the North American Securities Administrators Association,
 3 such other central depository system as determined by the commissioner, or
 4 the other agencies or authorities.

5
 6 SECTION 6. Arkansas Code § 23-42-208(c), concerning the Securities
 7 Commissioner's cooperation with other regulatory agencies, is amended to read
 8 as follows:

9 (c) The commissioner may permit initial and renewal registration
 10 filings required under this chapter to be filed with the Securities and
 11 Exchange Commission, the ~~National Association of Securities Dealers~~ Financial
 12 Industry Regulatory Authority, the North American Securities Administrators
 13 Association, or other similar authorities.

14
 15 SECTION 7. Arkansas Code § 23-42-209(a)(3), concerning relief
 16 requested by the Securities Commissioner, is amended to read as follows:

17 (3)~~(A)~~ The commissioner may, ~~after issuance of an order as set~~
 18 ~~forth above,~~ apply to the ~~Chancery Court of~~ Pulaski County Circuit Court to
 19 temporarily or permanently enjoin ~~the~~ an act or practice that violates this
 20 chapter and to enforce compliance with this chapter or any rule or order
 21 under this chapter.;

22 (A) After an order is issued under subdivision (a)(1) or
 23 subdivision (a)(2) of this section; or

24 (B) However, the commissioner may, without Without issuing
 25 ~~such an order, apply directly to the Chancery Court Pulaski County for the~~
 26 ~~aforsaid relief~~ under subdivision (a)(1) or subdivision (a)(2) of this
 27 section.

28
 29 SECTION 8. Arkansas Code § 23-42-301(c) and (d), concerning
 30 registration with the Securities Commissioner, are amended to read as
 31 follows:

32 (c) It is unlawful for any person to transact business in this state
 33 as an investment adviser or representative without first being registered
 34 under this chapter unless ~~such~~ the person:

35 (1) Is registered as an investment adviser with the Securities
 36 and Exchange Commission under Section 203 of the Investment Advisers Act of

1 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2009, and has
 2 filed with the commissioner or the commissioner's designee a notice filing
 3 consisting of a copy of such documents on file with the Securities and
 4 Exchange Commission as the commissioner may by rule or order prescribe, along
 5 with an appropriate fee as set forth in § 23-42-304(a)(3) and a consent to
 6 service of process;

7 (2) Is a "representative" of an investment adviser registered
 8 with the Securities and Exchange Commission under Section 203 of the
 9 Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on
 10 January 1, 2009, and has no place of business located in this state; or

11 (3) Is not registered as an investment adviser with the
 12 Securities and Exchange Commission under Section 203 of the Investment
 13 Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1,
 14 2009, because ~~such~~ the person is exempted from the definition of investment
 15 adviser under Section 202(a)(11) of ~~such~~ the Investment Advisers Act ~~Act~~ of
 16 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2009.

17 (d)(1) A notice filing required ~~under~~ by subdivision (c)(1) of this
 18 section ~~shall become~~ becomes effective upon receipt by the commissioner or
 19 the commissioner's designee of the notice filing, consent to service of
 20 process, and appropriate fee.

21 (2)(A) Every registration and every notice filing required ~~under~~
 22 by subdivision (c)(1) of this section expires December 31 of each year unless
 23 renewed.

24 (B)(i) An investment adviser that has made a notice filing
 25 pursuant to subdivision (c)(1) of this section may terminate ~~such~~ the notice
 26 filing upon providing the commissioner notification of ~~such~~ the termination.

27 (ii) ~~Such~~ The termination ~~shall be~~ is effective upon the
 28 commissioner's receipt of notification of termination.

29
 30 SECTION 9. Arkansas Code § 23-42-302(d), concerning registration
 31 procedure, is amended to read as follows:

32 (d) The commissioner may provide for a written examination to be taken
 33 by each class of applicants to be used as one (1) of the bases in determining
 34 an applicant's qualifications to be registered. ~~Any agent, broker-dealer,~~
 35 ~~investment adviser, or representative shall be exempt from examination,~~
 36 ~~except such part as relates to this chapter, if he was engaged in the~~

1 ~~securities business in Arkansas on July 1, 1959, and was registered with the~~
 2 ~~National Association of Securities Dealers or the federal Securities and~~
 3 ~~Exchange Commission.~~

4
 5 SECTION 10. The introductory language to Arkansas Code § 23-42-307(a),
 6 concerning unlawful acts by investment advisers, is amended to read as
 7 follows:

8 It is unlawful for any ~~person who receives, directly or indirectly, any~~
 9 ~~consideration from another person primarily for advising the other person as~~
 10 ~~to the value of securities or their purchase or sale, whether through the~~
 11 ~~issuance of analyses, reports, or otherwise~~ investment adviser or
 12 representative:

13
 14 SECTION 11. Arkansas Code § 23-42-402(c)(3), concerning the waiver of
 15 registration requirements about the minimum time a registration statement has
 16 been on file and a statement of offering prices and discounts, is amended to
 17 read as follows:

18 (3) The commissioner may by rule or otherwise waive either or
 19 both of the conditions specified in subdivisions ~~(e)(1)(A) and (e)(1)(B)~~
 20 (c)(1)(B) and (C) of this section.

21
 22 SECTION 12. Arkansas Code § 23-42-504(a)(2)(E), concerning exempt
 23 transactions, is amended to read as follows:

24 (E) The issuer of the security has a class of equity
 25 securities listed on a national securities exchange registered under the
 26 Securities Exchange Act of 1934, 15 U.S.C. §78a et seq., as it existed on
 27 January 1, 2009, or designated for trading on the National Association of
 28 Securities Dealers Automated Quotation System, unless:

29 (i) The issuer of the security is a unit investment
 30 trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1
 31 et seq., as it existed on January 1, 2009;

32 (ii) The issuer and predecessors of the issuer of
 33 the security ~~has~~ have been engaged in continuous business, ~~including~~
 34 ~~predecessors,~~ for at least three (3) years; or

35 (iii) The issuer of the security has total assets of
 36 at least two million dollars (\$2,000,000) based on:

1 (a) ~~an~~ An audited balance sheet ~~as of a date~~
2 dated within the past eighteen (18) months; or

3 (b) ~~, in~~ In the case of a reorganization or
4 merger ~~where parties to the reorganization or merger had such~~ of parties with
5 audited balance sheets dated within the past eighteen (18) months showing
6 total assets of at least two million dollars (\$2,000,000), a pro forma
7 balance sheet;

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