

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 541

4
5 By: Senator Rapert

For An Act To Be Entitled

8 AN ACT CONCERNING THE REGULATION OF CIVIL PROCEEDING
9 ADVANCE PAYMENT CONTRACTS; TO AMEND THE REVENUE
10 CLASSIFICATION LAW AND THE SECURITIES DEPARTMENT
11 FUND; AND FOR OTHER PURPOSES.

Subtitle

15 CONCERNING THE REGULATION OF CIVIL
16 PROCEEDING ADVANCE PAYMENT CONTRACTS; AND
17 TO AMEND THE REVENUE CLASSIFICATION LAW
18 AND THE SECURITIES DEPARTMENT FUND.

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

22
23 SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of
24 special revenues, is amended to add an additional subdivision to read as
25 follows:

26 (253) Fees and civil penalties collected under § 23-30-101 et seq.

27
28 SECTION 2. Arkansas Code § 19-6-475 is amended to read as follows:

29 19-6-475. Securities Department Fund.

30 ~~The Securities Department Fund shall consist of those special revenues~~
31 ~~as specified in § 19-6-301(211), the first four million dollars (\$4,000,000)~~
32 ~~of those special revenues as specified in § 19-6-301(173), (174), and (245),~~
33 ~~and such other funds as may be provided by law or regulatory action, there to~~
34 ~~be used for maintenance, operation, support, and improvement of the State~~
35 ~~Securities Department in carrying out its functions, powers, and duties as~~
36 ~~set out by law and by rule and regulation not inconsistent with law, as set~~



1 ~~out in § 23-42-211.~~

2 (a)(1) There is created on the books of the Treasurer of State, the
3 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
4 fund to be known as the “Securities Department Fund”.

5 (2) The fund shall be used for the maintenance, operation,
6 support, and improvement of the State Securities Department in carrying out
7 its functions, powers, and duties as set out by law and by rule not
8 inconsistent with law.

9 (3) The fund shall consist of:

10 (A) Fees and civil penalties designated for deposit into
11 the fund under § 23-30-101 et seq.;

12 (B) That portion of moneys designated for deposit into the
13 fund under § 23-42-213(c);

14 (C) The first four million dollars (\$4,000,000) of fees
15 designated for deposit into the fund under §§ 23-42-304(a)(2), 23-42-
16 304(a)(4) and (a)(5), and 23-42-404(b)(1); and

17 (D) Such other funds as may be provided by law or
18 regulatory action.

19 (b) The department may promulgate the rules necessary to administer
20 the fees, rates, tolls, or charges for the services provided by the
21 department as required by law and is directed to prescribe and collect such
22 fees, rates, tolls, or charges for the services in such manner as may be
23 necessary to support the programs of the department as directed by the
24 Governor and the General Assembly.

25

26 SECTION 3. Arkansas Code Title 23, Chapter 30, is amended to read as
27 follows:

28 Chapter 30

29 ~~General Provisions~~ Civil Proceeding Advance Payment Transactions

30

31 23-30-101. Application.

32 This chapter applies to a civil proceeding advance payment transaction
33 and a civil proceeding advance payment contract offered or entered into after
34 October 1, 2015.

35

36 23-30-102. Definitions.

1 As used in this chapter:

2 (1)(A) "Charge" means an amount that is imposed by a civil
 3 proceeding advance payment contract provider and payable or assignable by or
 4 on behalf of a consumer claimant and is in addition to the funded amount and
 5 the contract amount regardless of the term used by the civil proceeding
 6 advance payment contract provider in the civil proceeding advance payment
 7 contract to identify the amount, or of how the amount is determined or
 8 calculated by the civil proceeding advance payment contract provider.

9 (B) "Charge" includes without limitation:

10 (i) An administrative fee;

11 (ii) An origination fee;

12 (iii) An underwriting fee;

13 (iv) A case review fee;

14 (v) A case servicing fee;

15 (vi) A document management fee; or

16 (vii) Another fee:

17 (a) Related to services provided or costs
 18 incurred by the civil proceeding advance payment contract provider in
 19 connection with the civil proceeding advance payment contract transaction; or

20 (b) Imposed by the civil proceeding advance
 21 payment contract provider and payable or assignable by or on behalf of the
 22 consumer claimant, regardless of the term used by the civil proceeding
 23 advance payment contract provider in the civil proceeding advance payment
 24 contract to identify the amount, or of how the amount is determined or
 25 calculated by the civil proceeding advance payment contract provider;

26 (2)(A) "Civil proceeding" means any of the following that is
 27 filed in, or is under the jurisdiction of, a court with jurisdiction in
 28 Arkansas or an agency or political subdivision in Arkansas:

29 (i) A civil action;

30 (ii) A mediation, an arbitration, or any other
 31 alternative dispute resolution proceeding; or

32 (iii) An administrative proceeding.

33 (B) "Civil proceeding" includes without limitation:

34 (i) A proceeding on appeal or remand; and

35 (ii) Enforcement, ancillary, or parallel
 36 proceedings;

1 (3) "Civil proceeding advance payment contract" means a contract
2 for a civil proceeding advance payment contract transaction that a civil
3 proceeding advance payment contract provider enters into, or offers to
4 enter into, with a consumer claimant;

5 (4) "Civil proceeding advance payment contract provider" means
6 the same as "civil proceeding advance payment provider";

7 (5) "Civil proceeding advance payment contract transaction"
8 means the same as "civil proceeding advance payment transaction";

9 (6)(A) "Civil proceeding advance payment provider" means a
10 person that enters into, or offers to enter into, a civil proceeding advance
11 payment contract transaction with a consumer claimant in connection with a
12 civil proceeding and who is registered with or is required to be registered
13 with the State Securities Department.

14 (B) "Civil proceeding advance payment provider" does not
15 include any of the following:

16 (i) An immediate family member of a consumer
17 claimant;

18 (ii) A financial institution or a creditor subject
19 to the department;

20 (iii) Another person:

21 (a) That provides financing to a civil
22 proceeding advance payment contract provider; or

23 (b) To whom a civil proceeding advance payment
24 contract provider grants a security interest or assigns any rights or
25 interest in a civil proceeding advance payment contract transaction; or

26 (iv) An attorney, an accountant, a tax consultant, a
27 public or private benefits planning professional, or a financial professional
28 who provides services to a consumer claimant in connection with a civil
29 proceeding;

30 (7)(A) "Civil proceeding advance payment transaction" means a
31 nonrecourse transaction in which a civil proceeding advance payment contract
32 provider provides a funded amount to a consumer claimant to use for any
33 purpose other than prosecuting the consumer claimant's civil proceeding, if
34 the repayment of the funded amount is:

35 (i) Required only if the consumer claimant prevails
36 in the civil proceeding; and

1 (ii) Sourced from the proceeds of the civil
2 proceeding, whether the proceeds result from a judgment, a settlement, or
3 some other resolution.

4 (B) "Civil proceeding advance payment transaction"
5 includes a transaction:

6 (i) That is structured as a purchase; and

7 (ii) In which the civil proceeding advance payment
8 contract provider purchases from the consumer claimant a contingent right to
9 receive a share of the potential proceeds of the consumer claimant's civil
10 proceeding, whether the proceeds result from a judgment, a settlement, or
11 some other resolution;

12 (8)(A) "Consumer claimant" means a person:

13 (i) Who is or may become a plaintiff or a claimant
14 in a civil proceeding; and

15 (ii) Who:

16 (a) Is offered a civil proceeding advance
17 payment contract transaction by a civil proceeding advance payment contract
18 provider; or

19 (b) Enters into a civil proceeding advance
20 payment contract transaction with a civil proceeding advance payment contract
21 provider.

22 (B) A "consumer claimant" is not required to be a resident
23 of Arkansas;

24 (9)(A) "Contract amount" means, with respect to a civil
25 proceeding advance payment contract transaction and regardless of the term
26 used by the civil proceeding advance payment contract provider in the civil
27 proceeding advance payment contract to identify the amount or of how the
28 amount is determined or calculated by the civil proceeding advance payment
29 contract provider, an amount that is:

30 (i) In addition to the funded amount;

31 (ii) Payable or assignable to the civil proceeding
32 advance payment contract provider only if the consumer claimant prevails in
33 the consumer claimant's civil proceeding; and

34 (iii) Sourced from the proceeds of the civil
35 proceeding, whether the proceeds result from a judgment, a settlement, or
36 some other resolution.

1 (B) "Contract amount" does not include charges;

2 (10)(A) "Funded amount" means, with respect to a civil
3 proceeding advance payment contract transaction and regardless of the term
4 used by the civil proceeding advance payment contract provider in the civil
5 proceeding advance payment contract to identify the amount, the amount of
6 money:

7 (i) That is provided to the consumer claimant by the
8 civil proceeding advance payment contract provider; and

9 (ii) The repayment of which is:

10 (a) Required only if the consumer claimant
11 prevails in the consumer claimant's civil proceeding; and

12 (b) Sourced from the proceeds of the civil
13 proceeding, whether the proceeds result from a judgment, a settlement, or
14 some other resolution.

15 (B) In the case of a civil proceeding advance payment
16 transaction described under subdivision (7)(B) of this section and regardless
17 of the term used by the civil proceeding advance payment contract provider in
18 the civil proceeding advance payment contract to identify the amount, "funded
19 amount" means the price:

20 (i) That is paid by the civil proceeding advance
21 payment contract provider in purchasing from the consumer claimant a
22 contingent right to receive a share of the potential proceeds of the consumer
23 claimant's civil proceeding; and

24 (ii) The amount of which must be repaid only:

25 (a) If the consumer claimant prevails in the
26 consumer claimant's civil proceeding; and

27 (b) From the proceeds of the civil proceeding,
28 whether the proceeds result from a judgment, a settlement, or some other
29 resolution.

30 (C) "Funded amount" does not include the contract amount
31 or charges; and

32 (11) "Funding date" means the date on which a civil proceeding
33 advance payment contract provider transfers the funded amount to the consumer
34 claimant by:

35 (A) Personal delivery;

36 (B) Wire, automated clearinghouse, or other electronic

1 means; or

2 (C) Insured, certified, or registered United States mail.

3
4 23-30-103. Registration of civil proceeding advance payment contract.

5 (a) Except as provided in subsection (g) of this section, a person
6 shall not enter into, or offer to enter into, a civil proceeding advance
7 payment contract transaction with a consumer claimant or otherwise engage in
8 business as a civil proceeding advance payment contract provider:

9 (1) Except as authorized by this subchapter; and

10 (2) Unless the person first receives a certificate of
11 registration from the State Securities Department.

12 (b)(1)(A) An applicant for a certificate of registration under this
13 section shall file an application with the department in the form and manner
14 prescribed by the Securities Commissioner.

15 (B) An application form prescribed by the commissioner
16 under this section shall require the applicant to provide the information
17 that the commissioner determines is necessary to evaluate the character and
18 fitness of the applicant.

19 (2)(A) The department may issue a certificate of registration
20 under this section if the department finds that an applicant's business will
21 be operated honestly and fairly within the purposes of this chapter.

22 (B) If the department denies an application under this
23 section, the commissioner shall provide to the applicant written notice
24 stating that the application has been denied and setting forth the reasons
25 for the denial.

26 (3) In rules adopted under this chapter, the department may set
27 forth circumstances under which a certificate issued under this section may
28 be revoked or suspended for cause, including the failure of an applicant or
29 certificate holder to pay an application fee or a renewal fee described in
30 subsection (f) of this section.

31 (c) Upon written request, an applicant for a certificate of
32 registration under this section is entitled to an administrative review by
33 the department of the issue of the applicant's qualifications for a
34 certificate of registration under this section if either of the following
35 applies:

36 (1) The commissioner provides to the applicant written notice

1 that the applicant's application has been denied, as described in subsection
2 (b) of this section, and the applicant files a timely request for a review
3 under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; or

4 (2) The department does not issue a decision on the applicant's
5 application no later than sixty (60) days after the date the application is
6 filed, and the applicant files a request for an administrative review in
7 accordance with the procedures set forth in the Arkansas Administrative
8 Procedure Act, § 25-15-201 et seq., no later than seventy-five (75) days
9 after the date the application is filed.

10 (d) A certificate of registration issued by the department under this
11 section must be renewed with the department on the dates and in the manner
12 and form prescribed by the commissioner, but not less frequently than every
13 two (2) years.

14 (e) If at any time any information contained in an initial application
15 under subsection (b) of this section or in a renewal form or application
16 under subsection (d) of this section is or becomes inaccurate or incomplete
17 in a material respect, the applicant or registered civil proceeding advance
18 payment contract provider shall promptly file a correcting amendment with the
19 department in the form and manner prescribed by the commissioner.

20 (f)(1) The department may establish the following fees to cover the
21 department's expenses in administering this chapter:

22 (A) An application fee that an applicant is required to
23 submit with an initial application under subsection (b) of this section; and

24 (B) A renewal fee that a registered civil proceeding
25 advance payment contract provider must submit with a renewal form or
26 application under subsection (d) of this section.

27 (2) The department may impose a fee for each day that an
28 application fee or a renewal fee, or any related documents that are required
29 to be submitted with an initial application or a renewal application, are
30 delinquent.

31 (g)(1) Notwithstanding subsection (b) of this section, a person that
32 before August 1, 2015, enters into one (1) or more civil proceeding advance
33 payment contract transactions that are made with a consumer claimant in
34 connection with a civil proceeding and outstanding on September 15, 2015, and
35 submits an application for registration under this chapter to the department
36 after October 1, 2015, and before January 1, 2016, may enter into, or offer

1 to enter into, a civil proceeding advance payment contract transaction with a
 2 consumer claimant, or otherwise engage in business as a civil proceeding
 3 advance payment contract provider, while the person's application for
 4 registration under this section is pending with the department.

5 (2) However, if the department denies the person's application
 6 under this section, the person shall not enter into, or offer to enter into,
 7 a new civil proceeding advance payment contract transaction during the period
 8 beginning on the date of the department's denial under subsection (b) of this
 9 section and ending on the effective date of any certificate of registration
 10 subsequently issued to the person by the department under this section,
 11 subject to the person's right to a review under subsection (c) of this
 12 section and to any right to a stay or an appeal of the denial available under
 13 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

14 (3) A civil proceeding advance payment contract transaction
 15 entered into by the person before the effective date of the department's
 16 denial under subsection (b) of this section is not subject to this chapter,
 17 and a civil proceeding advance payment contract entered into by the person
 18 and a consumer claimant before the effective date of the department's
 19 denial under subsection (b) of this section remains in effect according to
 20 its terms, notwithstanding the department's denial of an application
 21 described in subdivision (b)(2)(B) of this section.

22
 23 23-30-104. Surety bond required.

24 (a) Each application for a certificate of registration under § 23-30-
 25 103 shall be accompanied by proof that the applicant has executed a surety
 26 bond in accordance with this section.

27 (b) A surety bond issued under this section shall:

28 (1) Be in a form prescribed by the Securities Commissioner;

29 (2) Be in effect during the term of the certificate of
 30 registration issued under this chapter;

31 (3) Be payable to the State Securities Department for the
 32 benefit of:

33 (A) The state; and

34 (B) A consumer claimant who enters into a civil proceeding
 35 advance payment contract transaction with the civil proceeding advance
 36 payment contract provider;

1 (4) Be in an amount determined by the commissioner, but not
2 greater than fifty thousand dollars (\$50,000); and

3 (5) Have payment conditioned upon the civil proceeding advance
4 payment contract provider's or any of the civil proceeding advance payment
5 contract provider's employees' or agents' noncompliance with or violation of
6 this chapter or other applicable federal or state laws or regulations.

7 (c) Beginning with the first renewal of a certificate of registration
8 under this chapter, for each renewal period that a registered civil
9 proceeding advance payment contract provider continues to engage in business
10 as a civil proceeding advance payment contract provider in connection with
11 any civil proceedings, the registered civil proceeding advance payment
12 contract provider shall file a new or an additional surety bond in an amount
13 that ensures that the registered civil proceeding advance payment contract
14 provider's surety bond under this section is equal to the amount determined
15 by the commissioner under subdivision (b)(4) of this section.

16 (d)(1) If the principal amount of a surety bond required under this
17 section is reduced by payment of a claim or judgment, the registered civil
18 proceeding advance payment contract provider for whom the bond is issued
19 shall immediately notify the commissioner of the reduction and, not later
20 than thirty (30) days after notice by the commissioner, file a new or an
21 additional surety bond in an amount set by the commissioner.

22 (2) The amount of the new or additional bond set by the
23 commissioner shall be at least the amount of the bond before payment of the
24 claim or judgment.

25 (e) If for any reason a surety terminates a bond issued under this
26 section, the registered civil proceeding advance payment contract provider
27 shall immediately notify the department and file a new surety bond in the
28 amount determined by the commissioner under subdivision (b)(4) of this
29 section.

30 (f) Cancellation of a surety bond issued under this section does
31 not affect any liability incurred or accrued during the period when the
32 surety bond was in effect.

33 (g) The commissioner may obtain satisfaction from a surety bond issued
34 under this section if the commissioner incurs expenses, issues a final order,
35 or recovers a final judgment under this chapter.

36

1 23-30-105. Contract requirements.

2 (a) Before presenting a civil proceeding advance payment contract to a
3 consumer claimant for the consumer claimant's signature, a civil proceeding
4 advance payment contract provider shall ensure that the civil proceeding
5 advance payment contract:

6 (1) Is complete;

7 (2) Has been filled in to include all amounts, dates, names,
8 terms, provisions, and information specific to the civil proceeding advance
9 payment contract, the civil proceeding advance payment contract provider, the
10 consumer claimant, and the consumer claimant's civil proceeding; and

11 (3) Meets the requirements of this chapter.

12 (b) Each page of a civil proceeding advance payment contract shall
13 include the initials of the consumer claimant.

14 (c)(1) If a consumer claimant is represented by an attorney in the
15 civil proceeding on which a civil proceeding advance payment contract
16 transaction is based, the civil proceeding advance payment contract shall
17 contain a written acknowledgment by the attorney that attests to the
18 following in connection with the civil proceeding advance payment contract
19 transaction:

20 (A) That to the best of the attorney's knowledge, all
21 costs and charges relating to the civil proceeding advance payment contract
22 transaction have been disclosed to the consumer claimant;

23 (B) That the attorney is being paid by the consumer
24 claimant on a contingency basis under a written fee agreement;

25 (C) That all proceeds of the civil proceeding will be
26 disbursed through:

27 (i) A trust account of the attorney; or

28 (ii) A settlement fund established to receive the
29 proceeds of the civil proceeding on behalf of the consumer claimant;

30 (D) That the attorney is following the instructions of the
31 consumer claimant with respect to the civil proceeding advance payment
32 contract transaction; and

33 (E) That the attorney:

34 (i) Has not received a referral fee or other
35 consideration from the civil proceeding advance payment contract provider;
36 and

1 (ii) Agrees not to receive a referral fee or other
2 consideration from the civil proceeding advance payment contract provider at
3 any time.

4 (2)(A) If the attorney retained by the consumer claimant in the
5 consumer claimant's civil proceeding does not complete the acknowledgment
6 required by this subsection, the civil proceeding advance payment contract,
7 and the civil proceeding advance payment contract transaction to which it
8 pertains, are void.

9 (B)(i) However, the civil proceeding advance payment
10 contract, and the civil proceeding advance payment contract transaction to
11 which it pertains, remain valid and enforceable if the consumer claimant or
12 the attorney terminates the attorney's representation.

13 (ii) If, after the termination, the consumer
14 claimant retains a new attorney in connection with the consumer claimant's
15 civil proceeding, the new attorney shall complete an acknowledgment under
16 this subsection for the civil proceeding advance payment contract, and the
17 civil proceeding advance payment contract transaction to which it pertains,
18 to remain valid and enforceable.

19 (d)(1) A civil proceeding advance payment contract shall be executed
20 in duplicate.

21 (2) Upon execution of the civil proceeding advance payment
22 contract, the civil proceeding advance payment contract provider shall:

23 (A) Furnish one (1) duplicate original and at least one
24 (1) copy of the civil proceeding advance payment contract to the consumer
25 claimant; and

26 (B) Retain for the civil proceeding advance payment
27 contract provider's records one (1) duplicate original and at least one (1)
28 copy of the civil proceeding advance payment contract.

29 (e) A civil proceeding advance payment contract provider shall not use
30 any civil proceeding advance payment contract form, other than a standard
31 civil proceeding advance payment contract form prescribed by the State
32 Securities Department in rules adopted by the department under § 23-30-117,
33 in connection with a civil proceeding unless the department first approves
34 the civil proceeding advance payment contract form.

35
36 23-30-106. Disclosure requirements.

1 (a)(1) A civil proceeding advance payment contract shall include the
2 disclosures set forth in this section.

3 (2) The disclosures required by this section:

4 (A) Constitute material terms of the civil proceeding
5 advance payment contract; and

6 (B) Shall:

7 (i) Be set forth in at least 12-point boldface type
8 and comply with any other typeface or stylistic specifications set forth in
9 this section; and

10 (ii) Be placed clearly and conspicuously within the
11 contract.

12 (b) The front page of a civil proceeding advance payment contract
13 shall include, under appropriate headings, language specifying the following:

14 (1) The funded amount to be paid to the consumer claimant by the
15 civil proceeding advance payment contract provider;

16 (2) The funding date;

17 (3)(A)(i) An itemization of all charges, whether assessed one
18 (1) time or on a recurring basis, that are payable or assignable by the
19 consumer claimant to the civil proceeding advance payment contract provider.

20 (ii) Charges under this subdivision (b)(3) shall be
21 included in the payment schedule described in subdivision (b)(5) of this
22 section.

23 (B)(i) For each charge listed, the civil proceeding
24 advance payment contract provider shall identify whether the charge:

25 (a) Is to be assigned by the consumer claimant
26 to the civil proceeding advance payment contract provider from the proceeds,
27 if any, of the consumer claimant's civil proceeding; or

28 (b) Is otherwise payable by the consumer
29 claimant to the civil proceeding advance payment contract provider.

30 (ii) For charges under this subdivision (b)(3), the
31 civil proceeding advance payment contract provider shall set forth a separate
32 payment schedule identifying the dates and amounts due;

33 (4) An identification of the following amounts to be assigned
34 by the consumer claimant to the civil proceeding advance payment contract
35 provider if the resolution of the consumer claimant's civil proceeding
36 results in proceeds to the consumer claimant:

1 (A) The funded amount; and

2 (B)(i) The contract amount.

3 (ii) In identifying the contract amount under this
4 subdivision (b)(4), it is sufficient for the civil proceeding advance payment
5 contract provider to identify the method, formula, or multiplier by which the
6 contract amount will be determined as of the date on which the civil
7 proceeding advance payment contract provider receives payment from the
8 proceeds of the consumer claimant's civil proceeding; and

9 (5) Beginning with the date that is one hundred eighty (180)
10 days after the funding date, continuing every one hundred eighty (180) days
11 thereafter, and ending with the date the amounts are actually paid or
12 assigned to the civil proceeding advance payment contract provider, for
13 amounts assignable by the consumer claimant to the civil proceeding advance
14 payment contract provider from the proceeds of the consumer claimant's civil
15 proceeding, including the funded amount, the contract amount, and any
16 applicable charges, a payment schedule that lists:

17 (A) The dates; and

18 (B) The amounts assignable by the consumer claimant to the
19 civil proceeding advance payment contract provider as of each date listed,
20 regardless of whether and when such amounts are actually paid or assigned,
21 depending on the outcome of the consumer's civil proceeding and the date on
22 which any proceeds from the civil proceeding become available for
23 disbursement.

24 (c) A civil proceeding advance payment contract shall contain, in a
25 mailing that is postmarked not later than five (5) days after the funding
26 date and in text that is surrounded by a border, a statement setting forth a
27 right of rescission that allows the consumer claimant to cancel the civil
28 proceeding advance payment contract without penalty or further obligation if
29 the consumer claimant does either of the following:

30 (1) No later than five (5) days after the funding date, returns
31 to the civil proceeding advance payment contract provider the full funded
32 amount by hand delivering the civil proceeding advance payment contract
33 provider's uncashed check to the civil proceeding advance payment contract
34 provider's business location;

35 (2) Mails, to the address specified in the civil proceeding
36 advance payment contract and by insured, certified, or registered United

1 States mail:

2 (A) A notice of cancellation; and

3 (B) The full funded amount, in the form of:

4 (i) The civil proceeding advance payment contract
5 provider's uncashed check;

6 (ii) A registered or certified check; or

7 (iii) A money order.

8 (d) A civil proceeding advance payment contract shall contain, in text
9 that is printed in all capital letters and surrounded by a border, the
10 following statement:

11 "THE FUNDED AMOUNT (or other term used by the civil proceeding
12 advance payment contract provider in the civil proceeding advance payment
13 contract), THE CONTRACT AMOUNT (or other term used by the civil proceeding
14 advance payment contract provider in the civil proceeding advance payment
15 contract), AND THE _____ (insert names of any charges the repayment of
16 which is to be sourced from the proceeds of the consumer claimant's civil
17 proceeding) ARE PAYABLE ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND
18 ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL
19 PROCEEDING. YOU WILL NOT OWE (insert name of civil proceeding advance payment
20 contract provider) THE FUNDED AMOUNT (or other term used by the civil
21 proceeding advance payment contract provider in the civil proceeding advance
22 payment contract), THE CONTRACT AMOUNT (or other term used by the civil
23 proceeding advance payment contract provider in the civil proceeding advance
24 payment contract), OR THE _____ (insert names of any charges the
25 repayment of which is to be sourced from the proceeds of the consumer
26 claimant's civil proceeding) IF THERE ARE NO PROCEEDS FROM YOUR CIVIL
27 PROCEEDING, UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF
28 THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (insert name of civil
29 proceeding advance payment contract provider)."

30 (e) A civil proceeding advance payment contract shall contain a
31 statement as to whether and under what circumstances:

32 (1) The consumer claimant's rights and obligations under the
33 civil proceeding advance payment contract may be sold, assigned, pledged, or
34 transferred by the consumer claimant and, if so, whether and
35 at what point the consumer claimant must obtain the consent of, or provide
36 notice to, the civil proceeding advance payment contract provider of such

1 sale, assignment, pledge, or transfer; and

2 (2) The civil proceeding advance payment contract provider's
3 rights and obligations under a civil proceeding advance payment contract may
4 be sold, assigned, pledged, or transferred by the civil proceeding advance
5 payment contract provider and, if so, whether and at what point the civil
6 proceeding advance payment contract provider must obtain the consent of, or
7 provide notice to, the consumer claimant of such sale, assignment, pledge, or
8 transfer.

9 (f) A civil proceeding advance payment contract shall contain a
10 statement as to whether, how often, and under what circumstances the civil
11 proceeding advance payment contract provider may request from the consumer
12 claimant or the consumer claimant's attorney periodic updates or other
13 information concerning the consumer claimant's civil proceeding, including
14 any of the following documents or information that may be sought by the civil
15 proceeding advance payment contract provider:

16 (1) Notice of any receipt by the consumer claimant or the
17 consumer claimant's attorney of proceeds, or written promises to pay
18 proceeds, from the civil proceeding;

19 (2) Copies of nonprivileged materials, including pleadings,
20 notices, orders, motions, briefs, or other documents filed in the civil
21 proceeding by any person or party; and

22 (3) Documents or verbal information concerning nonprivileged
23 matters or developments in connection with the civil proceeding.

24 (g) A civil proceeding advance payment contract shall contain the
25 following statement immediately above the signature line for the consumer
26 claimant:

27 "Do not sign this contract before you read it completely or if
28 it contains any blank spaces. You are entitled to a completely filled-in copy
29 of this contract. Before you sign this contract, you should obtain the advice
30 of an attorney. Depending on your circumstances, you may want to consult an
31 accountant, a tax consultant, a public or private benefits planning
32 professional, or a financial professional. By signing this contract, you
33 acknowledge that if you are represented by an attorney in your civil
34 proceeding, your attorney has provided no tax, accounting, public or private
35 benefits planning, or financial advice concerning this transaction between
36 you and (insert name of civil proceeding advance payment contract

1 provider).".

2
3 23-30-107. Transfer of funds.

4 A civil proceeding advance payment contract provider shall transfer the
5 funded amount to a consumer claimant not later than the funding date, as set
6 forth in the civil proceeding advance payment contract, by one (1) of the
7 following means:

8 (1) Personal delivery;

9 (2) Wire, automated clearinghouse, or other electronic method;

10 or

11 (3) Insured, certified, or registered United States mail.

12
13 23-30-108. Calculation of contract amount.

14 Subject to § 23-30-109, the contract amount in a civil proceeding
15 advance payment contract transaction:

16 (1) Shall be calculated as a predetermined amount:

17 (A) According to a method, formula, or multiplier
18 determined by the civil proceeding advance payment contract provider, as
19 described in § 23-30-106(b)(4)(B); and

20 (B) Based on intervals of one hundred eighty (180) days
21 measured from the funding date through the date of assignment to the civil
22 proceeding advance payment contract provider, as described in § 23-30-
23 106(b)(5);

24 (2) May be based on, or determined as a percentage of, the
25 funded amount; and

26 (3) Shall not be determined as a percentage of the consumer
27 claimant's recovery from the consumer claimant's civil proceeding.

28
29 23-30-109. Assessment and collection of contract amount.

30 (a) Regardless of the contract amount that results from the
31 calculation described in § 23-30-108, a civil proceeding advance payment
32 contract provider shall not assess or collect, with respect to any one (1)
33 civil proceeding advance payment contract transaction, a contract amount that
34 exceeds seventeen percent (17%) of the funded amount.

35 (b) A civil proceeding advance payment contract provider shall not for
36 the purpose of avoiding the prohibition set forth in subsection (a) of this

1 section:

2 (1) Structure a civil proceeding advance payment contract
3 transaction arising from the same civil proceeding:

4 (A) As more than one (1) transaction; or

5 (B) In any other manner; or

6 (2) Impose a charge under the civil proceeding advance payment
7 contract, whether assignable from the proceeds of the consumer claimant's
8 civil proceeding or otherwise payable to the civil proceeding advance payment
9 contract provider, in an amount that:

10 (A) Exceeds any amount, percentage, limit, or cap
11 concerning charges and prescribed by the State Securities Department in rules
12 adopted under this chapter; or

13 (B) Exceeds a reasonable amount based upon the value of
14 the services provided or costs incurred by the civil proceeding advance
15 payment contract provider in consideration of the charge.

16 (c) All or part of a charge that exceeds a reasonable amount based
17 upon the value of the service provided or cost incurred by the civil
18 proceeding advance payment contract provider shall be included in the
19 contract amount for the purpose of determining compliance with subsection (a)
20 of this section.

21
22 23-30-110. Sale, assignment, pledge, or transfer of proceeds – Liens.

23 (a) Subject to § 23-30-106(e)(1) and except as otherwise
24 provided in a civil proceeding advance payment contract and agreed to by a
25 consumer claimant and the consumer claimant's attorney, a contingent right
26 to receive a share of the potential proceeds of a consumer claimant's civil
27 proceeding, whether the proceeds result from a judgment, a settlement, or
28 some other resolution, may be sold, assigned, pledged, or transferred by the
29 consumer claimant.

30 (b) Subject to § 23-30-106(e)(2) and except as otherwise provided in a
31 civil proceeding advance payment contract and agreed to by a consumer
32 claimant and the consumer claimant's attorney, a civil proceeding advance
33 payment contract provider's rights and obligations under a civil proceeding
34 advance payment contract may be sold, assigned, pledged, or transferred by
35 the civil proceeding advance payment contract provider.

36 (c)(1) A civil proceeding advance payment contract provider's right to

1 receive a share of the potential proceeds of a consumer claimant’s civil
2 proceeding is subordinate only to any:

- 3 (A) Attorney’s lien;
- 4 (B) Medical lien; or
- 5 (C) Statutory lien.

6 (2) All other liens take priority according to when they attach
7 or by normal operation of law.

8
9 23-30-111. Prohibitions.

10 A civil proceeding advance payment contract provider shall not do any
11 of the following:

12 (1) Pay or offer to pay the following persons or their employees
13 for referring a consumer claimant to the civil proceeding advance payment
14 contract provider or the civil proceeding advance payment contract provider’s
15 business:

- 16 (A) An attorney or law firm;
- 17 (B) A medical or healthcare provider;
- 18 (C) A chiropractor; or
- 19 (D) A physical therapist or occupational therapist;

20 (2) Accept any commissions, referral fees, rebates, or other
21 forms of consideration from any of the following persons in connection with a
22 civil proceeding advance payment contract transaction or a potential civil
23 proceeding advance payment contract transaction:

- 24 (A) An attorney or law firm;
- 25 (B) A medical or healthcare provider;
- 26 (C) A chiropractor; or
- 27 (D) A physical therapist or occupational therapist;

28 (3) Advertise or communicate in Arkansas any materially false
29 or misleading information concerning the civil proceeding advance payment
30 contract provider’s products and services, whether such an advertisement or
31 communication is by mail, brochure, telephone, print, radio, television, the
32 Internet, or other electronic means;

33 (4)(A) Refer, in connection with a civil proceeding advance
34 payment contract transaction, a consumer claimant to any of the following
35 persons or any of their employees:

- 36 (i) An attorney or law firm;

1 (ii) A medical or healthcare provider;

2 (iii) A chiropractor; or

3 (iv) A physical therapist or occupational therapist.

4 (B) However, if a consumer claimant who has consulted the
5 civil proceeding advance payment contract provider or entered into a civil
6 proceeding advance payment contract transaction with the civil proceeding
7 advance payment contract provider needs legal representation in connection
8 with the consumer claimant's civil proceeding or the civil proceeding advance
9 payment contract transaction, the civil proceeding advance payment contract
10 provider may refer the consumer claimant to a local or state bar
11 association's attorney referral service;

12 (5)(A) Except as otherwise prohibited in the civil proceeding
13 advance payment contract between the original civil proceeding advance
14 payment contract provider and the consumer claimant, knowingly enter into a
15 civil proceeding advance payment contract transaction with a consumer
16 claimant who has previously entered into a civil proceeding advance payment
17 contract transaction with another civil proceeding advance payment contract
18 provider in connection with the same civil proceeding, unless the second
19 civil proceeding advance payment contract provider first pays to, or
20 purchases from, the original civil proceeding advance payment contract
21 provider:

22 (i) Any outstanding amounts, including the funded
23 amount, the contract amount, and any charges, under the first civil
24 proceeding advance payment contract provider's civil proceeding advance
25 payment contract with the consumer claimant; or

26 (ii) Any other amount agreed to by the civil
27 proceeding advance payment contract providers.

28 (B) However, two (2) or more civil proceeding advance
29 payment contract providers may agree to contemporaneously enter into civil
30 proceeding advance payment contract transactions with a consumer claimant in
31 connection with the same civil proceeding if the consumer claimant and the
32 consumer claimant's attorney consent in writing to the arrangement;

33 (6)(A) Make, or receive the right to make, any decisions with
34 respect to the conduct, settlement, or resolution of a consumer claimant's
35 civil proceeding. However, a civil proceeding advance payment contract
36 provider may request from a consumer claimant or the consumer claimant's

1 attorney periodic updates or other information concerning the consumer
2 claimant's civil proceeding, if the nature, timing, and frequency of the
3 requests are:

4 (i) Set forth in the civil proceeding advance
5 payment contract, as required by § 23-30-106(f); and

6 (ii) Not such as to be harassing to the consumer
7 claimant or the consumer claimant's attorney.

8 (B) A civil proceeding advance payment contract provider's
9 right to request updates or other information under this subdivision (6) does
10 not limit, waive, or abrogate the scope or nature of, and is subject to, any
11 applicable statutory or common law privilege, including the work product
12 doctrine or the attorney-client privilege; or

13 (7) Pay or offer to pay for court costs, filing fees, or
14 attorney's fees in connection with a consumer claimant's civil proceeding
15 using funds from the civil proceeding advance payment contract transaction or
16 any other funds.

17
18 23-30-112. Financial interest by attorney or law firm prohibited.

19 (a) An attorney or a law firm retained by a consumer claimant in a
20 civil proceeding on which a civil proceeding advance payment contract
21 transaction is based shall not have a financial interest in the civil
22 proceeding advance payment contract provider that enters into the civil
23 proceeding advance payment contract transaction with the consumer claimant.

24 (b) An attorney or a law firm that refers a consumer claimant to the
25 attorney or law firm retained by a consumer claimant in a civil proceeding on
26 which a civil proceeding advance payment contract transaction is based shall
27 not have a financial interest in the civil proceeding advance payment
28 contract provider that enters into the civil proceeding advance payment
29 contract transaction with the consumer claimant.

30
31 23-30-113. Violations.

32 For purposes of this chapter and applicable to civil proceeding advance
33 payment contract transactions or civil proceeding advance payment contract
34 providers, a violation of, or compliance with, this section includes a
35 violation of, or compliance with:

36 (1) The provisions set forth in this chapter;

1 (2) Rules adopted by the State Securities Department under this
2 chapter;

3 (3) Any policy, guidance document, or order adopted or issued by the
4 department in connection with this chapter; or

5 (4) Any other state or federal law, regulation, or rule.

6
7 23-30-114. Investigations into violations.

8 (a) The State Securities Department may examine the books, accounts,
9 and records of a civil proceeding advance payment contract provider and may
10 make investigations to determine compliance with this chapter.

11 (b)(1) A civil proceeding advance payment contract provider shall pay
12 all reasonably incurred costs of an examination under this section in
13 accordance with the fee schedule adopted by the department.

14 (2) A fee established by the department may be charged for each
15 day a fee under this section is delinquent.

16 (c)(1) To discover violations of this chapter or to secure information
17 necessary for the enforcement of this chapter, the department may investigate
18 any:

19 (A) Civil proceeding advance payment contract provider
20 that holds a registration certificate under this chapter; or

21 (B) Person that the department suspects to be operating as
22 a civil proceeding advance payment contract provider in Arkansas:

23 (i) Without a certificate of registration; or

24 (ii) Otherwise in violation of this chapter.

25 (2)(A) The department has all investigatory and enforcement
26 authority under this chapter that the department has under the Arkansas
27 Securities Act, § 23-42-101 et seq., with respect to financial institutions.

28 (B) If the department conducts an investigation under this
29 section, the registered civil proceeding advance payment contract provider or
30 other person investigated shall pay all reasonably incurred costs of the
31 investigation in accordance with the fee schedule adopted by the department.

32 (d)(1) If a civil proceeding advance payment contract provider
33 contracts with an outside vendor to provide a service that would otherwise be
34 undertaken internally by the civil proceeding advance payment contract
35 provider and be subject to the department's routine examination procedures,
36 the person that provides the service to the civil proceeding advance payment

1 contract provider shall, at the request of the Securities Commissioner,
2 submit to an examination by the department.

3 (2) If the commissioner determines that an examination under
4 this subsection is necessary or desirable, the examination may be made at the
5 expense of the person to be examined.

6 (3) If the person to be examined under this subsection refuses
7 to permit the examination to be made, the commissioner may order any civil
8 proceeding advance payment contract provider that receives services from the
9 person refusing the examination to:

10 (A) Discontinue receiving one (1) or more services from
11 the person; or

12 (B) Otherwise cease conducting business with the person.

13
14 23-30-115. Voided contract resulting from invalid certificate of
15 registration.

16 (a) If the State Securities Department determines that a reasonable
17 belief exists that a person is operating without a valid certificate of
18 registration or in violation of this chapter, the department may investigate
19 the person.

20 (b)(1) If a person knowingly acts as a civil proceeding advance
21 payment contract provider without a certificate of registration required by §
22 23-30-103, any resulting civil proceeding advance payment contract or civil
23 proceeding advance payment contract transaction entered into by the civil
24 proceeding advance payment contract provider and a consumer claimant is void,
25 and the consumer claimant is not required to pay to the civil proceeding
26 advance payment contract provider any amounts in connection with the civil
27 proceeding advance payment contract or civil proceeding advance payment
28 contract transaction, including the funded amount, the contract amount, or
29 any charges.

30 (2) If the consumer claimant has paid to the civil proceeding
31 advance payment contract provider any amounts in connection with the civil
32 proceeding advance payment contract or civil proceeding advance payment
33 contract transaction, the consumer claimant, or the department on behalf of
34 the consumer claimant, is entitled to recover the amounts from the civil
35 proceeding advance payment contract provider.

36

1 23-30-116. Civil penalty – Civil action.

2 (a) If the State Securities Department determines, after notice and an
3 opportunity to be heard, that a person has violated this chapter, the
4 department may, in addition to or instead of all other remedies available
5 under this chapter, impose upon the person a civil penalty no greater than
6 ten thousand dollars (\$10,000) for each violation.

7 (b)(1) In addition to or instead of imposing a civil penalty under
8 subsection (a) of this section, the department may bring a civil action
9 against a person for violating this chapter.

10 (2) In an action brought under subsection (b) of this section,
11 if the court finds that the defendant has violated this chapter, the court
12 may assess a civil penalty not to exceed five thousand dollars (\$5,000)
13 for each violation.

14 (c) Civil penalties collected under this section shall be deposited
15 into the State Treasury as special revenues and credited to the Securities
16 Department Fund.

17
18 23-30-117. Rulemaking authorized.

19 The State Securities Department may adopt rules to implement this
20 chapter.

21
22 23-30-118. Disposition of fees.

23 All fees collected by the State Securities Department under this
24 chapter shall be deposited into the State Treasury as special revenues and
25 credited to the Securities Department Fund.

26
27 SECTION 4. Arkansas Code § 23-42-211 is repealed.

28 ~~23-42-211. Disposition of fees.~~

29 ~~(a)(1) There is created on the books of the Chief Fiscal Officer of the~~
30 ~~State, the Auditor of State, and the Treasurer of State a fund to be known as~~
31 ~~the "Securities Department Fund".~~

32 ~~(2) The fund shall be used for the maintenance, operation,~~
33 ~~support, and improvement of the State Securities Department in carrying out~~
34 ~~its functions, powers, and duties as set out by law and by rule and~~
35 ~~regulation not inconsistent with law.~~

36 ~~(3) The fund shall consist of those portions of fees designated~~

1 ~~for deposit into the fund pursuant to §§ 23-42-304(a)(2), (a)(4), and (a)(5)~~
2 ~~and 23-42-404(b)(1) and such other funds as may be provided by law or~~
3 ~~regulatory action.~~

4 ~~(4) Notwithstanding subdivision (a)(3) of this section, no more~~
5 ~~than four million dollars (\$4,000,000) shall be deposited into the fund in~~
6 ~~any one (1) fiscal year.~~

7 ~~(b) The department is authorized to promulgate such rules and~~
8 ~~regulations necessary to administer the fees, rates, tolls, or charges for~~
9 ~~services established by this section and is directed to prescribe and collect~~
10 ~~such fees, rates, tolls, or charges for the services by the department in~~
11 ~~such manner as may be necessary to support the programs of the department as~~
12 ~~directed by the Governor and the General Assembly.~~

13
14 SECTION 5. DO NOT CODIFY. Effective date.

15 This act is effective on and after October 1, 2015.
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