

"AN ACT TO AMEND SECTIONS 13 AND 14 OF ACT NO. 254 OF THE ACTS OF ARKANSAS OF 1959, AS AMENDED, THE ARKANSAS SECURITIES ACT; TO DEFINE THE TERM "FARM COOPERATIVE"; TO CLARIFY THE ORGANIZATIONS ELIGIBLE FOR THE EXEMPTION FROM REGISTRATION OF CERTAIN SECURITIES ISSUED BY FARM COOPERATIVES; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 13 of Act No. 254 of the Acts of Arkansas of 1959, as amended, the same being Ark. Stat. Ann. 67-1247, is hereby amended to provide for the definition of the new term "farm cooperative" by inserting a new subsection (d) as hereinafter set out and by redesignating the section headings of the succeeding alphabetized terms defined therein:

(d) 'Farm cooperative' means any cooperative formed for the purpose of (i) purchasing, producing, processing, marketing, distributing, or selling crops or livestock for, or on behalf of, its members or (ii) purchasing, marketing, or distributing meat, dairy, bakery, produce, or other food or grocery products for, or on behalf, of its members. 'Farm cooperative' shall not include any association formed for the purpose of purchasing food or grocery products for, or on behalf of, consumers.

SECTION 2. Subsection 12 of subsection (a) of Section 14 of Act No. 254 of the Acts of Arkansas of 1959, as amended, the same being Ark. Stat. Ann. 67-1248, is hereby amended as follows:

"(12) The following shall apply to farm cooperatives organized under the laws of the State as a business corporation but operated as a cooperative or organized and operated in this State under Act 116 of 1921, as amended, Act 632 of 1921, as amended, Act 153 of 1939, as amended, and to any nonprofit farm cooperative which is qualified to do business in this State:

(i) Any common stock, preferred stock, promissory note, debenture or other security may be issued to any cooperative member after either compliance with subsection (e) or delivery to the cooperative member and filing with the Commissioner of financial statements of the farm cooperative for each of the two fiscal years as of a date not earlier than 455 days prior to the issuance of the security, all of which statements shall have been audited, examined, and certified by independent public accountants to have been prepared in accordance with generally accepted accounting principles consistently maintained by the cooperative during the fiscal years represented by the statements. No registered agent shall be required if no commission or other remuneration is to be paid in connection with the offer and sale of such securities; or,

(ii) Any interest or agreement which qualifies its holder to be a member or other patron of a farm cooperative or which represents the terms or conditions by which members or other patrons purchase or sell agricultural products or commodities from, to or through a farm cooperative, or which represents a capital retain, or patronage distribution issued by a farm cooperative solely to its members or other patrons shall not be considered to be a security under the Arkansas Securities Act and shall not be subject to the provisions of the Act provided: (1) such instruments or interests are properly identified and not labeled with the traditional names of investments securities as defined by Section 13(1) of the Act; (2) such instruments or

interests are not part of a class of instruments or interests regularly bought or sold for investment purposes or for which an active trading market exists; provided, however, this limitation shall not in any way restrict the bona fide pledge of such instruments or interests; and (3) no commission or other remuneration is paid in connection with the sale or issuance to members or other patrons of such interests and instruments. This exemption shall not apply to those interests or instruments which possess the characteristics of an investment contract or other security as interpreted under the laws of the State of Arkansas.

(iii) The Commissioner may render foreign nonprofit farm cooperatives the privilege afforded Arkansas nonprofit farm cooperatives set forth in subsection (ii) provided such foreign cooperative first files supporting documents verifying it is qualified to do business in Arkansas, that members have substantially the same rights as members of farm cooperatives organized under the nonprofit farm cooperative corporate laws of this State, that such offering is within the scope of subsection (ii), and such other information as the Commissioner deems appropriate."

SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 4. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 5. It has been found and it is declared by the General Assembly that an urgent need exists to define the term "farm cooperative" in order to clarify which organizations are eligible for an exemption from registration under the Arkansas Securities Act (Act No. 254 of the Acts of Arkansas of 1959), as amended, of certain securities issued by farm cooperatives, and that immediate passage of this Act is necessary to provide such clarification. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

APPROVED: April 7, 1987

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