

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

Act 534 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1877

5 By: Representative Wells
6 By: Senator Horn
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE ARKANSAS SECURITIES ACT, §
11 23-42-101 ET SEQ.; TO REGULATE SECURITIES LAW
12 ADMINISTRATION, REGISTRATION, SANCTIONS, BOND
13 REQUIREMENTS, AND EXAMINATION FEES; AND FOR OTHER
14 PURPOSES.

Subtitle

16 TO AMEND THE ARKANSAS SECURITIES ACT, §
17 23-42-101 ET SEQ., AND TO REGULATE
18 SECURITIES LAW ADMINISTRATION,
19 REGISTRATION, SANCTIONS, BOND
20 REQUIREMENTS, AND EXAMINATION FEES.
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 23-42-102, concerning definitions under the
27 Arkansas Securities Act, is amended to add additional subdivisions to read as
28 follows:

29 (17)(A) "Branch office" means any location other than the main
30 office of a broker-dealer or investment adviser where an agent or
31 representative regularly conducts business on behalf of the broker-dealer or
32 investment adviser.

33 (B) "Branch office" includes a location that is held out
34 as an office where an agent or representative regularly conducts business on
35 behalf of a broker-dealer or investment advisor.



1 (C) "Branch office" does not include:

2 (i) A location that is established solely for
 3 customer service or back-office-type functions where no sales activities are
 4 conducted and that is not held out to the public as a branch office;

5 (ii) A location that is the primary residence of the
 6 agent or representative if:

7 (a) Only agents or representatives who reside
 8 at the location and are members of the same immediate family conduct business
 9 at the location;

10 (b) The location is not held out to the public
 11 as an office and the agent or representative does not meet with customers at
 12 the location;

13 (c) Neither customer funds nor securities are
 14 handled at the location;

15 (d) The agent or representative is assigned to
 16 a designated branch office and the designated branch office is reflected on
 17 all business cards, stationery, advertisements, and other communications to
 18 the public by the agent or representative;

19 (e) The correspondence of the agent or
 20 representative and communications with the public are subject to the
 21 supervision of the broker-dealer or investment adviser with which the agent
 22 or representative is associated;

23 (f) Electronic communications, including
 24 email, are made through the electronic system of the broker-dealer or
 25 investment adviser;

26 (g) All orders for securities are entered
 27 through the designated branch office or an electronic system established by a
 28 broker-dealer that is reviewable at the branch office;

29 (h) Written supervisory procedures pertaining
 30 to supervision of activities conducted at the residence are maintained by the
 31 broker-dealer or investment adviser; and

32 (i) A list of the residence locations is
 33 maintained by the broker-dealer or investment adviser;

34 (iii)(a) A location other than a primary residence
 35 that:

36 (1) Is used for a securities or

1 investment advisory business for less than thirty (30) business days in any
 2 one (1) calendar year; and

3 (2) Satisfies the requirements of
 4 subdivisions (17)(C)(ii)(b) – (h) of this section.

5 (b) As used in this subdivision (17)(C)(iii),
 6 “business day” does not include a day in which the agent or representative
 7 spends at least four (4) hours at the designated branch office of the agent
 8 or representative during the hours that the designated branch office is
 9 normally open for business;

10 (iv) An office of convenience that is not held out
 11 to the public as an office where associated persons occasionally and
 12 exclusively by appointment meet with customers;

13 (v) A location that is used primarily to engage in
 14 nonsecurities activities and from which the agent or representative effects
 15 no more than twenty-five (25) securities transactions in any one (1) calendar
 16 year, if any advertisement or sales literature identifying the location also
 17 provides the address and telephone number of another location from which the
 18 agent or representative conducting business at the location is directly
 19 supervised;

20 (vi) The floor of a registered national securities
 21 exchange where a broker-dealer conducts a direct access business with public
 22 customers; or

23 (vii) A temporary location established in response
 24 to the implementation of a business continuity plan; and

25 (18) “Main office” means the principal place of business of a
 26 broker-dealer or an investment adviser from which the officers, partners, or
 27 managers of the broker-dealer or investment adviser direct, control, and
 28 coordinate the activities of the broker-dealer or investment adviser.

29
 30 SECTION 2. Arkansas Code § 23-42-209(a)(2)(C), concerning the
 31 regulatory powers of the Securities Commissioner, is amended to read as
 32 follows:

33 (C) ~~If a hearing is requested or ordered, the~~
 34 ~~commissioner, after notice of an opportunity for hearing, may affirm, modify,~~
 35 ~~or vacate the order. After notice and an opportunity for a hearing, the~~
 36 commissioner may:

1 (i) Affirm, modify, or vacate the cease and desist
2 order under subdivision (a)(1)(A) of this section; and

3 (ii) For a violation of this chapter other than a
4 violation of § 23-42-509, by order, levy a fine not to exceed:

5 (a) Ten thousand dollars (\$10,000) for each
6 violation or an amount equal to the total amount of money received in
7 connection with each violation; or

8 (b) If a victim of a violation is sixty-five
9 (65) years of age or older:

10 (1) Twenty thousand dollars (\$20,000)
11 for each violation; or

12 (2) Two (2) times the amount of money
13 received in connection with each violation.

14
15 SECTION 3. Arkansas Code § 23-42-211(a)(3), concerning the Securities
16 Department Fund, is amended to read as follows:

17 (3) The fund shall consist of those portions of fees designated
18 for deposit into the fund pursuant to §§ 23-42-304(a)(2) ~~and~~, (a)(4), ~~and~~
19 (a)(5) and 23-42-404(b)(1) and such other funds as may be provided by law or
20 regulatory action.

21
22 SECTION 4. Arkansas Code § 23-42-301, concerning registration
23 requirements, is amended to add an additional subsection to read as follows:

24 (f) No broker-dealer or investment adviser shall conduct business from
25 a branch office within this state unless the branch office is registered
26 under this chapter.

27
28 SECTION 5. Arkansas Code § 23-42-302(a), concerning registration
29 procedures, is amended to read as follows:

30 (a)(1) A broker-dealer, agent, investment adviser, ~~or~~ representative,
31 or branch office may obtain an initial or renewal registration by filing with
32 the Securities Commissioner or the commissioner's designee an application and
33 fee, together with a consent to service of process ~~pursuant to~~ under § 23-42-
34 107(a).

35 (2) The commissioner may by order approve a limited registration
36 with such limitations, qualifications, or conditions as the commissioner

1 deems appropriate.

2

3 SECTION 6. Arkansas Code § 23-42-304(a), concerning registration
4 filing fees, is amended to read as follows:

5 (a) Every applicant for initial or renewal registration and every
6 person making a notice filing as required by § 23-42-301(c) shall pay a
7 filing fee of:

8 (1) Three hundred dollars (\$300) in the case of a broker-dealer;

9 (2) Seventy-five dollars (\$75.00) in the case of an agent, of
10 which twenty-five dollars (\$25.00) shall be designated as special revenues
11 and shall be deposited ~~in~~ into the Securities Department Fund;

12 (3) Three hundred dollars (\$300) in the case of an investment
13 adviser; ~~and~~

14 (4) Seventy-five dollars (\$75.00) in the case of a
15 representative, of which twenty-five dollars (\$25.00) shall be designated as
16 special revenues and shall be deposited ~~in~~ into the Securities Department
17 Fund; and

18 (5) Fifty dollars (\$50.00) in the case of a branch office, of
19 which the entire amount shall be designated as special revenues and deposited
20 into the Securities Department Fund.

21

22 SECTION 7. Arkansas Code § 23-42-305 is amended to read as follows:

23 23-42-305. Corporate Surety Bonds – Alternatives.

24 (a)~~(1)~~ The Securities Commissioner shall require registered broker-
25 dealers, investment advisers, and an agent for the issuer to maintain a bond
26 in such form and amount as he or she may by rule prescribe, ~~registered~~
27 ~~investment advisers who hold customer funds or who have discretionary~~
28 ~~authority over any customer's account to post a corporate surety bond in the~~
29 ~~amount of fifty thousand dollars (\$50,000), and, unless the commissioner~~
30 ~~prescribes otherwise, an agent for the issuer to post a corporate surety bond~~
31 ~~in the amount of twenty five thousand dollars (\$25,000).~~

32 (2) However, this subsection ~~shall~~ does not apply to any
33 registered investment adviser that maintains its principal place of business
34 in a state other than Arkansas that:

35 ~~(1)~~(A) Is registered or licensed as such in the state in
36 which it maintains its principal place of business; and

SECTION 9. The introductory language of Arkansas Code § 23-42-308(a), concerning registration penalties, is amended to read as follows:

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

SECTION 10. Arkansas Code § 23-42-308(g), concerning the imposition of fines and penalties, is amended to read as follows:

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative ~~up to~~ not to exceed:

(1) a maximum of five thousand dollars (\$5,000) for Ten thousand dollars (\$10,000) or an amount equal to the total amount of money received in connection with each separate violation of this chapter; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars (\$20,000) for each violation;
or

(B) Two (2) times the amount of money received in connection with each violation.

APPROVED: 3/24/2009