

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 363

4
5 By: Senator Teague
6 By: Representative Ingram

For An Act To Be Entitled

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8
9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE SECURITIES
10 LAWS; AND FOR OTHER PURPOSES.

Subtitle

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14 TO AMEND VARIOUS PROVISIONS OF THE
15 SECURITIES LAWS.

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

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20 SECTION 1. Arkansas Code § 23-42-102(1)(A), concerning the definition
21 of "agent" under the Arkansas Securities Act, is amended to read as follows:

22 (1)(A) "Agent" means ~~any~~ an individual, other than a broker-
23 dealer, who:

24 (i) ~~represents~~ Represents a broker-dealer or issuer
25 in effecting or attempting to effect purchases or sales of securities; and

26 (ii) Supervises individuals who effect or attempt to
27 effect purchases or sales of securities for a broker-dealer.

28
29 SECTION 2. Arkansas Code § 23-42-102(9)(E), concerning the definition
30 of "issuer" under the Arkansas Securities Act, is amended to read as follows:

31 (E) ~~With respect to viatical~~ For life settlement
32 contracts, ~~the term~~ "issuer" means:

33 (i) ~~In the case of~~ For a fractional or pooled
34 interest in ~~viatical~~ a life settlement ~~contracts~~ contract, the person ~~who~~
35 that creates for the purpose of sale the fractional or pooled interest; and

36 (ii) ~~In the case of~~ For a ~~viatical~~ life settlement



1 contract that is not fractionalized or pooled, the person effecting the
2 transaction with the investor in ~~such a~~ the contract, but does not include a
3 broker-dealer or agent of a broker-dealer;

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5 SECTION 3. Arkansas Code § 23-42-102(15)(A)(xiii), concerning the
6 definition of "security", is amended to read as follows:

7 (xiii) ~~Viatical Life~~ Life settlement contract or
8 fractionalized or pooled interest ~~therein~~ in a life settlement contract;

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10 SECTION 4. Arkansas Code § 23-42-209(b), concerning remedies available
11 to the Securities Commissioner, is amended to read as follows:

12 (b) The commissioner may also ~~seek and the appropriate court shall,~~
13 obtain upon proper showing, ~~grant~~ any other ancillary relief ~~which may be in~~
14 the public interest, including without limitation:

15 (1) ~~the~~ The appointment of a receiver, temporary receiver, or
16 conservator~~;~~;

17 (2) ~~declaratory~~ A declaratory judgment~~;~~;

18 (3) ~~obtaining an~~ An accounting~~;~~;

19 (4) ~~disgorgement~~ Disgorgement of profits~~;~~;

20 (5) Restitution~~;~~ or

21 (6) ~~assessment~~ The assessment of a fine in an amount of not more
22 than the total amount of money received in connection with ~~any a~~ a violation of
23 this chapter, ~~or other relief as may be appropriate in the public interest.~~

24
25 SECTION 5. Arkansas Code § 23-42-306(d)(2)(B), concerning examination
26 fees, is amended to read as follows:

27 (B) In addition to the fee, the commissioner may require
28 the applicant, issuer, broker-dealer, or investment adviser ~~shall~~ to pay the
29 actual hotel and traveling expenses of each authorized examiner traveling to
30 and from the office of the commissioner while the examiner is conducting the
31 examination.

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33 SECTION 6. Arkansas Code § 23-42-308(a)(2)(E), concerning denial,
34 suspension, revocation, or withdrawal of registration, is amended to read as
35 follows:

36 (E) Is the subject of an order of the commissioner

1 denying, suspending, ~~or~~ revoking, or making conditional or probationary a
 2 registration as a broker-dealer, agent, investment adviser, or
 3 representative;

4
 5 SECTION 7. Arkansas Code § 23-42-308(a)(2)(J), concerning denial,
 6 suspension, revocation, or withdrawal of registration, is amended to read as
 7 follows:

8 (J) Has failed reasonably to supervise the agents or
 9 employees of the broker-dealer or the representatives or employees of the
 10 investment adviser; or

11
 12 SECTION 8. The introductory language of Arkansas Code § 23-42-401(b),
 13 concerning registration by notification, is amended to read as follows:

14 (b) A registration statement under this section shall contain the
 15 following information and be accompanied by the following documents in
 16 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c) and
 17 the consent to service of process required by § 23-42-107(a):

18
 19 SECTION 9. The introductory language of Arkansas Code § 23-42-402(b),
 20 concerning registration by coordination, is amended to read as follows:

21 (b) A registration statement under this section shall contain the
 22 following information and be accompanied by the following documents in
 23 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c) and
 24 the consent to service of process required by § 23-42-107(a):

25
 26 SECTION 10. The introductory language of Arkansas Code § 23-42-403(b),
 27 concerning registration by qualification, is amended to read as follows:

28 (b) A registration statement under this section shall contain the
 29 following information and be accompanied by the following documents in
 30 addition to the information specified in ~~§ 23-42-404(d)~~ § 23-42-404(c), and
 31 the consent to service of process required by § 23-42-107:

32
 33 SECTION 11. Arkansas Code § 23-42-404, concerning registration
 34 statements, is amended to add an additional subsection to read as follows:

35 (p) The commissioner may consider a registration statement abandoned
 36 and withdrawn by the applicant if the:

1 (1) Registration statement has not been completed within one
2 hundred eighty (180) days after filing with the commissioner; and

3 (2) Applicant has been notified of the deficiencies in the
4 application and provided a reasonable opportunity to correct the
5 deficiencies.

6
7 SECTION 12. Arkansas Code § 23-42-405(a)(2)(A), concerning denying the
8 effectiveness of a registration statement, is amended to read as follows:

9 (2)(A) The registration statement, ~~as of its effective date or~~
10 ~~as of any earlier date in the case of an order denying effectiveness, or any~~
11 ~~amendment under § 23-42-404(o) as of its effective date, or any report under~~
12 ~~§ 23-42-404(o),~~ is incomplete in any material respect or contains any
13 statement ~~which~~ that was, in the light of the circumstances under which it
14 was made, false or misleading with respect to any material fact, ~~as of the~~
15 effective date of:

16 (i) The registration statement or an earlier date
17 from an order denying the effective date of the registration statement;

18 (ii) An amendment under § 23-42-404(n); or

19 (iii) A report under § 23-42-404(m);
20

21 SECTION 13. Arkansas Code § 23-42-405(a)(2)(C), concerning denying the
22 effectiveness of a registration statement, is amended to read as follows:

23 (C) The security registered or sought to be registered is
24 the subject of an administrative stop order or similar order or a permanent
25 or temporary injunction of ~~any~~ a court of competent jurisdiction entered
26 under any other federal or state act applicable to the offering, but:

27 (i) The commissioner ~~may~~ shall not institute a
28 proceeding against an effective registration statement under this subdivision
29 ~~(a)(1)(C)~~ (a)(2)(C) more than one (1) year from the date of the order or
30 injunction relied on; and

31 (ii) The commissioner ~~may~~ shall not enter an order
32 under this subdivision (a)(2)(C) on the basis of an order or injunction
33 entered under ~~any other~~ another state act unless that order or injunction was
34 based on facts ~~which~~ that would currently constitute ~~a ground~~ grounds for a
35 stop order under this section;
36

1 SECTION 14. Arkansas Code § 23-42-504(a)(2)(E), concerning exempted
2 transactions, is amended to read as follows:

3 (E) The issuer of the security has a class of equity
4 securities listed on a national securities exchange registered under the
5 Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on
6 ~~January 1, 2009~~ January 1, 2011, unless:

7 (i) The issuer of the security is a unit investment
8 trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1
9 et seq., as it existed on ~~January 1, 2009~~ January 1, 2011;

10 (ii) The issuer and predecessors of the issuer of
11 the security have been engaged in continuous business for at least three (3)
12 years; or

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

15 (a) An audited balance sheet dated within the
16 past eighteen (18) months; or

17 (b) In the case of a reorganization or merger
18 of parties with audited balance sheets dated within the past eighteen (18)
19 months showing total assets of at least two million dollars (\$2,000,000), a
20 pro forma balance sheet;

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23 **APPROVED: 03/18/2011**
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