

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

550

By: Senator Hardin

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
ANNOTATED TO PROVIDE FOR REGISTERED INVESTMENT COMPANIES; AND
FOR OTHER PURPOSES."

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

SECTION 1. Section 4-27-140 of the Arkansas Code Annotated is hereby amended by adding the following:

"27. 'Investment company' means any corporation registered with the United States Securities and Exchange Commission as an investment company under the Investment Company Act of 1940, 15 U.S.C. §80a-1, et seq."

SECTION 2. Section 4-27-601 of the Arkansas Code Annotated is hereby amended by adding the following:

"E. The board of directors of an investment company, may increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has the authority to issue, unless a provision has been legally included in the articles of incorporation of the corporation after May 1, 1989, prohibiting an act by the board of directors to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has authority to issue.

1. If the board of directors of an investment company increases or decreases the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has the authority to issue in accordance with Subsection E of this Section, the board of directors, before issuing any of the newly authorized stock, shall file articles supplementary for recording with the Secretary of State.

2. Articles supplementary shall include:

(i) Both as of immediately before the increase or decrease and as

increased or decreased: (1) the total number of shares of stock of all classes that the corporation has authority to issue; (2) the number of shares of stock of each class; (3) the par value of the shares of stock of each class or a statement that the shares are without par value; and (4) if there are any shares of stock with par value, the aggregate par value of all the shares of all classes;

(ii) A statement that the corporation is registered as an investment company under the Investment Company Act of 1940; and

(iii) A statement that the total number of shares of capital stock that the corporation has authority to issue has been increased or decreased by the board of directors in accordance with Subsection E of this Section.

3. In order to be filed, articles supplementary shall be accompanied by an opinion of legal counsel licensed in this state familiar with the Investment Company Act of 1940 opining that the statements contained in subsections 2.(ii) and (iii) hereof are correct to the best of such counsel's knowledge and said articles supplementary shall be executed in the manner required by Section 4-27-120 of the Arkansas Code Annotated."

SECTION 3. Section 4-27-701 of the Arkansas Code Annotated is hereby amended by adding the following:

"D. If the articles of incorporation or bylaws of an investment company so provides, the corporation is not required to hold an annual meeting in any year in which no action is to be taken which requires a vote of shareholders under the Investment Company Act of 1940, unless a meeting is called by more than fifty percent (50%) of the holders of all classes of shares of the corporation or by more than fifty percent (50%) of the board of directors."

SECTION 4. Section 4-27-640 of the Arkansas Code Annotated is hereby amended by adding the following:

"G. If the articles of incorporation or bylaws of an investment company so provides, the board of directors may delegate to a committee of the board of directors or to the officers of the corporation the authority to determine the amount of, declare and distribute dividends in accordance with the policies adopted by the board of directors."

SECTION 5. Title 26, Chapter 51, Subchapter 4 of the Arkansas Code

Annotated is hereby amended by adding a new section to read as follows:

"26-51-439. (a) Subchapter M of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §§851 through 860G, is adopted as state income tax law and shall govern all corporations which are registered as investment companies under the Investment Company Act of 1940.

(b) Any election made for federal income tax purposes under Subchapter M of the Internal Revenue Code of 1986, as amended, shall be deemed made for state income tax purposes.

(c) This Section shall take effect and be enforced for tax years beginning on or after January 1, 1988."

SECTION 6. Section 23-42-106(f) of the Arkansas Code Annotated is hereby amended to read as follows:

"(f) No person may sue under this section after three (3) years from the effective date of the contract of sale. No person may sue under this section:

(1) If the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt; or

(2) If the buyer received such an offer before suit and at a time when he did not own the security unless he rejected the offer in writing within thirty (30) days of its receipt."

SECTION 7. Section 23-42-503(a) of the Arkansas Code Annotated is hereby amended by adding a new subdivision to read as follows:

"(a) The following securities are exempted from §§ 23-42-501 and 23-42-502:

(1)(A) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any certificate of deposit for any of the foregoing;

(B) Any securities that are offered and sold pursuant to Section 4(5) of the Securities Act of 1933 or that are "mortgage related securities" as that term is defined in Section 3(a)(41) of the Securities Exchange Act of 1934 are not securities exempt from registration under this section in the

same manner as obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. These instruments, commonly referred to as private mortgage-backed securities, may be exempt from the registration requirements of this chapter provided that the transaction or the securities are otherwise exempt under this section. This provision specifically overrides the preemption of state law contained in Section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, of the United States;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of any bank organized under the laws of the United States, or any federally insured savings bank, or any bank, savings institution, or trust company organized and supervised under the laws of any state, or any bank holding company regulated under the Bank Holding Company Act of 1956, as amended;

(4) Any security issued by and representing an interest in or a debt of any state or federal savings and loan association, or any federally insured savings bank, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state, or any savings and loan holding company regulated by the Federal Savings and Loan Insurance Corporation;

(5) Any security issued by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(A) Subject to the jurisdiction of the Interstate Commerce Commission;

(B) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(C) Regulated in respect of its rates and charges by a governmental

authority of the United States or any state; or

(D) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(7) (A) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or any other stock exchange approved by the commissioner;

(B) Any other security of the same issuer which is of senior or substantially equal rank;

(C) Any security called for by subscription rights or warrants so listed or approved; or

(D) Any warrant or right to purchase or subscribe to any of the foregoing;

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of the renewal;

(10) Any investment contract or other security issued in connection with an employees' stock purchase, savings, pension, profit sharing, stock bonus, stock option, or similar benefit plan if, in the case of plans which do not meet the requirements for qualification under the United States Internal Revenue Code, there is filed with the commissioner prior to any offer or sale a notice specifying the terms of the plan and the commissioner does not by order disallow the exemption within ten (10) days;

(11) Any security as to which the commissioner by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(12) Any security issued by any Arkansas corporation which is registered as an investment company under the Investment Company Act of 1940."

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 10. Emergency. it is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval.