

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.

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.
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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.

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



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

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

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

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

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

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

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

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

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

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

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

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

35 (1) Is used for a securities or
36 investment advisory business for less than thirty (30) business days in any

1 one (1) calendar year; and

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

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

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

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

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

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

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

28
 29 SECTION 2. Arkansas Code § 23-42-209(a)(2)(C), concerning the
 30 regulatory powers of the Securities Commissioner, is amended to read as
 31 follows:

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

36 (i) Affirm, modify, or vacate the cease and desist

1 order under subdivision (a)(1)(A) of this section; and

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

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

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

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

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

13
 14 SECTION 3. Arkansas Code § 23-42-211(a)(3), concerning the Securities
 15 Department Fund, is amended to read as follows:

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

20
 21 SECTION 4. Arkansas Code § 23-42-301, concerning registration
 22 requirements, is amended to add an additional subsection to read as follows:

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

26
 27 SECTION 5. Arkansas Code § 23-42-302(a), concerning registration
 28 procedures, is amended to read as follows:

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

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

1
 2 SECTION 6. Arkansas Code § 23-42-304(a), concerning registration
 3 filing fees, is amended to read as follows:

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

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

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

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

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

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

20
 21 SECTION 7. Arkansas Code § 23-42-305 is amended to read as follows:

22 23-42-305. Corporate Surety Bonds – Alternatives.

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

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

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

36 ~~(2)~~(B) Is in compliance with the applicable bonding

1 requirements of the state in which it maintains its principal place of
 2 business.

3 (b) The following ~~shall~~ apply to those bonds required to be posted
 4 with the commissioner under subsection (a) of this section:

5 (1) ~~In no event shall the~~ The total liability of the surety to
 6 all persons, cumulative or otherwise, shall not exceed the amounts specified
 7 in the bond;

8 (2) Every bond shall provide that ~~no suit may~~ a suit shall not
 9 be maintained to enforce any liability on the bond unless brought within five
 10 (5) years after the sale or other act upon which it is based; and

11 (3) Every bond shall provide for suit ~~thereon~~ on the bond by any
 12 person who has a cause of action under this chapter; ~~and.~~

13 ~~(4) However, in lieu of the posting of a corporate surety bond,~~
 14 ~~the commissioner shall accept any appropriate deposit of cash or securities~~
 15 ~~issued by the federal government, the State of Arkansas, or any political~~
 16 ~~subdivision thereof, and having a market value of an amount equal to the~~
 17 ~~required corporate surety bond. The deposits of cash and securities shall not~~
 18 ~~be withdrawn until five (5) years after the last effective date of~~
 19 ~~registration or the last effective date for which the deposit was used as a~~
 20 ~~requirement.~~

21
 22 SECTION 8. Arkansas Code § 23-42-306(d)(2), concerning examination
 23 fees, is amended to read as follows:

24 (d)(2)(A) The applicant, issuer, broker-dealer, or investment adviser
 25 shall pay a fee for each examination, not to exceed ~~one hundred dollars~~
 26 ~~(\$100)~~ one hundred fifty dollars (\$150) per examiner for each day, or for
 27 each part of a day, during which ~~any and all~~ examiners are absent from the
 28 office of the commissioner for the purpose of ~~making~~ conducting the
 29 examination; ~~and.~~

30 (B) In addition to the fee, the applicant, issuer, broker-
 31 dealer, or investment adviser shall pay the actual hotel and traveling
 32 expenses of ~~such~~ each authorized examiner traveling to and from ~~Little Rock,~~
 33 ~~Arkansas~~ the office of the commissioner while the examiner is conducting the
 34 examination.

35
 36 SECTION 9. The introductory language of Arkansas Code § 23-42-308(a),

1 concerning registration penalties, is amended to read as follows:

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

5
6 SECTION 10. Arkansas Code § 23-42-308(g), concerning the imposition of
7 fines and penalties, is amended to read as follows:

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

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

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

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

19 or

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

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