

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 186

5 By: Senator Rapert
6 By: Representative Lowery
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS SECURITIES ACT; TO AMEND
10 THE DEFINITION OF "INVESTMENT ADVISER" UNDER THE
11 ARKANSAS SECURITIES ACT; CONCERNING THE DISPOSITION
12 OF FEES UNDER THE ARKANSAS SECURITIES ACT; TO
13 REGULATE AN EXEMPT TRANSACTION UNDER THE ARKANSAS
14 SECURITIES ACT; TO CLARIFY THE FILING REQUIREMENTS OF
15 CERTAIN SECURITIES UNDER THE ARKANSAS SECURITIES ACT;
16 TO AMEND THE DEFINITION OF "CLAIMANT AGENCY" AS USED
17 IN THE STATUTES CONCERNING COLLECTION OF DELINQUENT
18 TAXES; AND FOR OTHER PURPOSES.
19
20

Subtitle

21
22 TO AMEND THE ARKANSAS SECURITIES ACT; AND
23 TO AMEND THE DEFINITION OF "CLAIMANT
24 AGENCY" AS USED IN THE STATUTES
25 CONCERNING COLLECTION OF DELINQUENT
26 TAXES.
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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31 SECTION 1. Arkansas Code § 23-42-102(9), concerning the definition of
32 "investment adviser" under the Arkansas Securities Act, is amended to read as
33 follows:

34 (9)(A) "Investment adviser" means any person ~~who~~ that, for
35 compensation, engages in the business of advising others, either directly or
36 through publications or writings, as to the value of securities or as to the



1 advisability of investing in, purchasing, or selling securities, or ~~who~~ that,
 2 for compensation and as part of a regular business, issues or promulgates
 3 analyses or reports concerning securities.

4 (B) "Investment adviser" includes a financial planner or
 5 other person that, as an integral component of other financially related
 6 services, provides or holds itself out as providing investment advice to
 7 others for compensation and as part of a business.

8 (C) "Investment adviser" does not include:

9 ~~(A)(i)~~ A bank, savings and loan association, credit
 10 union, or trust company;

11 ~~(B)(ii)~~ A lawyer, accountant, engineer, or teacher
 12 whose performance of these services is solely incidental to the practice of
 13 his or her profession;

14 ~~(C)(iii)~~ A broker-dealer whose performance of these
 15 services is solely incidental to the conduct of his or her business as a
 16 broker-dealer and who receives no special compensation for them;

17 ~~(D)(iv)~~ A publisher of any bona fide newspaper, news
 18 column, newsletter, news magazine, or business or financial publication or
 19 service of general, regular, and paid circulation, whether communicated in
 20 hard copy form, by electronic means, or otherwise, that does not consist of
 21 the rendering of advice on the basis of the specific investment situation of
 22 each client;

23 ~~(E)(v)~~ A person who has no place of business in this
 24 state if:

25 ~~(i)(a)~~ His or her only clients in this state
 26 are other investment advisers, broker-dealers, banks, savings institutions,
 27 trust companies, insurance companies, investment companies as defined in the
 28 Investment Company Act of 1940, pension or profit-sharing trusts, or other
 29 financial institutions or institutional buyers, whether acting for themselves
 30 or as trustees; or

31 ~~(ii)(b)~~ During the preceding twelve-month
 32 period he or she has had fewer than six (6) clients who are residents of this
 33 state, other than those persons specified in ~~subdivision (9)(E)(i)~~
 34 (9)(C)(v)(a) of this section; or

35 ~~(F)(vi)~~ ~~Such other persons~~ Any person not within the
 36 intent of this subdivision (9) as the commissioner may by rule or order

1 designate;

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3 SECTION 2. Arkansas Code § 23-42-211(a)(4), concerning the Securities
4 Department Fund, is amended to read as follows:

5 (4) Notwithstanding subdivision (a)(3) of this section, ~~no more~~
6 ~~than two million five hundred thousand dollars (\$2,500,000) shall be~~
7 ~~deposited into the fund in any one (1) fiscal year~~ at the end of each fiscal
8 year, the Securities Commissioner shall transfer into the General Revenue
9 Fund Account of the State Apportionment Fund any moneys in the Securities
10 Department Fund that exceed the amount of the department's next fiscal-year
11 budget.

12

13 SECTION 3. Arkansas Code § 23-42-504(a)(8), concerning transactions
14 that are exempt under the Arkansas Securities Act, is amended to read as
15 follows:

16 (8)(A) Any offer or sale+

17 ~~(A) By an issuer to a person in a state other than this~~
18 ~~state if that offer or sale would be lawful if made in the other state; or~~

19 ~~(B) To~~ to a bank, savings institution, trust company,
20 insurance company, investment company as defined in the Investment Company
21 Act of 1940, pension or profit-sharing trust, or other financial institution
22 or institutional buyer, or to a broker-dealer, whether the purchaser is
23 acting for itself or in some fiduciary capacity.

24 (B) The commissioner may by order, upon petition by any
25 person, determine if the petitioner may be deemed, upon the basis of
26 knowledge, experience, volume, and number of transactions, and other
27 securities background, an "institutional buyer" for purposes of ~~this~~
28 ~~subdivision (a)(8)~~ subdivision (a)(8)(A) of this section;

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30 SECTION 4. Arkansas Code § 23-42-504(a), concerning regulation of
31 exempt transactions under the Arkansas Securities Act, is amended to add an
32 additional subdivision to read as follows:

33 (14) An offer or sale of a security to a person who is not a
34 resident of this state and is not present in this state, if the offer or sale
35 is not:

36 (A) A violation of the laws of the state or foreign

1 jurisdiction in which the offeree or purchaser is present; and

2 (B) Part of an unlawful plan or scheme to evade this
3 chapter.

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5 SECTION 5. Arkansas Code § 23-42-509(c)(3), concerning the duration of
6 effectiveness of a notice filing for a covered securities offering, is
7 amended to read as follows:

8 (3)(A) Unless an issuer conducts a continuous offering and files
9 concurrent amendments as required by subdivision (c)(2) of this section, an
10 offering under subdivision (c)(1) of this section is effective for twelve
11 (12) months from the date of the filing. A notice filing for a covered
12 securities offering under subdivision (c)(1) of this section is effective for
13 twelve (12) months from the date of the initial filing with the commissioner.

14 (B) A notice filing for a covered securities offering
15 under subdivision (c)(1) of this section shall be renewed on or before the
16 anniversary date of the initial notice filing, or the notice filing shall
17 terminate.

18 (C) To renew a notice filing, an issuer of a covered
19 securities offering shall:

20 (i) Submit the appropriate forms and documents as
21 filed with the United States Securities and Exchange Commission under the
22 Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

23 (ii) Pay a fee of one hundred dollars (\$100).

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25 SECTION 6. Arkansas Code § 23-42-509(c), concerning the filing
26 requirements for a covered securities offering, is amended to add an
27 additional subdivision to read as follows:

28 (4)(A) If a notice filing required to be filed under subdivision
29 (c)(1) of this section is completed by an issuer at least fifteen (15) days
30 after, but within one (1) year of, the first sale of the covered securities
31 in this state, then the issuer shall pay a late notice filing penalty of five
32 hundred dollars (\$500).

33 (B) If a notice filing is filed more than one (1) year
34 after the first sale of the covered securities in this state, then the issuer
35 shall pay a late notice filing penalty of one thousand dollars (\$1,000).

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1 SECTION 7. Arkansas Code § 23-42-509(d), concerning the filing
2 requirements for a covered securities offering, is amended to read as
3 follows:

4 (d)(1) With respect to a covered security under section 18(b)(4)(C) of
5 the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(C), if the issuer's
6 principal place of business is located in this state or purchasers of fifty
7 percent (50%) or greater of the aggregate amount of the offering are
8 residents of this state, the commissioner may by rule or order require the
9 issuer to:

10 ~~(1)(A)~~ File concurrently with the commissioner the
11 information required to be filed with the United States Securities and
12 Exchange Commission under section 4A(b) of the Securities Act of 1933, 15
13 U.S.C. § 77d-1(b); and

14 ~~(2)(B)~~ Pay a fee of one hundred dollars (\$100).

15 (2)(A) A notice filing for a covered securities offering under
16 subdivision (d)(1) of this section is effective for twelve (12) months from
17 the date of the initial filing with the commissioner.

18 (B) A notice filing for a covered securities offering
19 under subdivision (d)(1) of this section shall be renewed on or before the
20 anniversary date of the initial notice filing or the notice filing shall
21 terminate.

22 (C) To renew a notice filing, an issuer of a covered
23 securities offering shall:

24 (i) Submit the appropriate forms and documents as
25 filed with the United States Securities and Exchange Commission under the
26 Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

27 (ii) Pay a fee of one hundred dollars (\$100).

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29 SECTION 8. Arkansas Code § 23-42-509(e), concerning the filing
30 requirements for a covered securities offering, is amended to read as
31 follows:

32 (e)(1) Except as provided under subsection (c) or subsection (d) of
33 this section, with respect to a covered security under section 18(b)(3) of
34 the Securities Act of 1933, 15 U.S.C. § 77r(b)(3), as it existed on ~~January~~
35 ~~1, 2017~~ January 1, 2019, or section 18(b)(4) of the Securities Act of 1933,
36 15 U.S.C. § 77r(b)(4), as it existed on ~~January 1, 2017~~ January 1, 2019, the

1 commissioner may by rule or order require the issuer to:

2 ~~(1)~~(A) Concurrently file with the commissioner any
3 document or information required to be filed with the United States
4 Securities and Exchange Commission; and

5 ~~(2)~~(B) Pay a fee of one hundred dollars (\$100).

6 (2)(A) A notice filing for a covered securities offering under
7 subdivision (e)(1) of this section is effective for twelve (12) months from
8 the date of the initial filing with the commissioner.

9 (B) A notice filing for a covered securities offering
10 under subdivision (e)(1) of this section shall be renewed on or before the
11 anniversary date of the initial notice filing, or the notice filing shall
12 terminate.

13 (C) To renew a notice filing, an issuer of a covered
14 securities offering shall:

15 (i) Submit the appropriate forms and documents as
16 filed with the United States Securities and Exchange Commission under the
17 Securities Act of 1933, 15 U.S.C. § 77a et seq.; and

18 (ii) Pay a fee of one hundred dollars (\$100).

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20 SECTION 9. Arkansas Code § 26-36-303(1)(A), concerning the definition
21 of "claimant agency" as used in the collection of debts owed to state
22 agencies, is amended to add an additional subdivision to read as follows:

23 (xviii) The State Securities Department.
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